TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1929

No. 425

PANAMA MAIL STEAMSHIP COMPANY,
PETITIONER,

vs.

ERNESTINA ISABELLE VARGAS

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED SEPTEMBER 28, 1929

CERTIORARI GRANTED OCTOBER 21, 1929

(34,556)

(34.556)

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In the Southern Division of the District Court of the United States, in and for the Northern District of California, Third Division,

IN ADMIRALTY—No. 19,631-S.

ERNESTINA ISABELLE VARGAS,
Libellant,

vs.

PANAMA MAIL STEAMSHIP COMPANY,
Respondent.

PRAECIPE FOR APOSTLES ON APPEAL.

To the Clerk of the Above-entitled Court:

Please prepare the apostles on appeal of the above-entitled action, to contain the following:

1. All those papers, documents and data required by subparagraph (1) of Section 1 of Rule 4 of the Rules in Admiralty of the United States Circuit Court of Appeals for the Ninth Circuit.

2. All the pleadings with the exhibits annexed thereto.

3. All the testimony and other proofs adduced in the cause, including the testimony taken at the trial, all depositions taken by either party and admitted in evidence, and all exhibits introduced by either party, said exhibits to be sent up as original exhibits.

4. The order that decree be entered in favor of libelant for Ten Thousand (10,000) Dollars and costs.

5. The final decree in favor of libelant for Ten Thousand (10,000) Dollars and costs.

6. The notice of appeal. [1*]

7. The assignments of error.

8. All stipulations and orders extending time for printing the record and filing and docketing the cause on appeal.

9. Stipulation and order regarding original exhibits on appeal.

THACHER & WRIGHT,
Proctors for Respondent.

Dated January 4th, 1929.

[Endorsed]: Service of the within praecipe for apostles on appeal and receipt of a copy is hereby admitted this 4th day of January, 1929.

H. W. HUTTON,
Proctor for Libelant.

Filed Jan. 4, 1929. [2]

[Title of Court and Cause.]

STATEMENT OF CLERK UNDER RULE 4.

Parties.

Libelant: Ernestina Isabelle Vargas.

Respondent: Panama Mail Steamship Company, a Corporation.

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*Page-number appearing at the foot of page of original certified Apostles on Appeal.

Proctors.

For Libelant: H. W. HUTTON, Esq.,

For Respondent: THACHER & WRIGHT, Esqs.

Proceedings.

1928.

Mar. 28. Filed libel for damages for criminal assault.

Issued citation, which bears the following return of the United States Marshal:

"I have served this writ personally, by copy on Panama Mail S.S. Company, by handing to C. C. Mallory, Treasurer of the Panama Mail S.S. Company this 23d day of March, A. D. 1928.

FRED L. ESOLA,
U. S. Marshal.
By W. J. FERGUSON,
Deputy Marshal." [3]

Filed affidavit *in forma pauperis* and order permitting libellant to prosecute this cause without payment of costs.

Apr. 18. Filed answer of respondent to libel with interrogatories attached.

May 31. Filed respondent's supplemental interrogatories.

Filed respondent's notice of motion to dismiss.

June 4. Motion to dismiss libel denied; motion to answer interrogatories granted. (Hon. A. F. St. Sure, Judge.)

14. Filed libelant's answers to interrogatories.

Aug. 16. Filed depositions of Curt Zastrow et al., taken on behalf of respondent.

Filed two depositions of Jose Blanco Reyes, taken on behalf of respondent.

Sept. 12. Trial. (Hon. A. F. St. Sure, Judge.) Con't September 13th, 1928.

13. Trial resumed.

14. Trial resumed. Submitted on briefs.

Dec. 15. Filed order for decree in favor of libelant in the sum of $10,000.00 and costs.

24. Filed decree.

29. Filed notice of appeal.

1929.

Jan. 2. Filed supersedeas and cost bond.

Filed notice of filing bond on appeal.

4. Filed praecipe for apostles on appeal.

31. Filed assignment of errors.

Feb. 11. Filed testimony. [4]

In the Southern Division of the District Court of the United States, in and for the Northern District of California, Third Division.

IN ADMIRALTY.

ERNESTINA ISABELLE VARGAS,
Libelant,

vs.

PANAMA MAIL STEAMSHIP LINE,
Defendant.

(LIBEL.)

To the Honorable, the Judges of the Above-entitled Court.

The libel of the libelant above named, now of said district, against the defendant above named, also of said district, a common carrier of passengers on steam vessels, in a cause of damage for a criminal assault, alleges as follows.

I.

That on all of the dates and times herein mentioned, defendant above named was and now is a corporation organized and existing under and by virtue of the laws of the State of California, and on all of said dates and times it was and now is the owner and operator of a certain steam vessel flying the flag of and engaged in the merchant service of the United States of America, named the "Ecuador."

II.

That on all of said dates and times defendant was a common carrier of passengers for hire on said "Ecuador" between ports in Central America, and the Port of San Francisco, California, and elsewhere.

IV.

That on or about the 10th day of October, 1927, libelant took passage on said vessel "Ecuador," at a place called La Libertad, in the Republic of Salvador, Central America, and paid defendant the charges asked by it for such passage, and went on board said vessel at said place, and was by defendant assigned to stateroom No. 31 on said vessel, for such passage.

V.

That at said time libelant was chaste, unfamiliar with the English language, which was spoken on said vessel, she speaking only the Spanish [5] language, and she had never traveled on a steamship before, or left her home or her parents.

VI.

That there was on board of said vessel at said time one Jose Blanco, who was in the employ of defendant thereon as second steward, and in that capacity he acted for defendant and was employed by it to protect passengers thereon, see that the said vessel's staterooms were kept clean, and the wants of all the passengers thereon including the libelant properly attended to, and said passengers protected and properly cared for, and in carrying out such duties of defendant, the said Blanco was

in charge of the waiters on said vessel, and required at times to visit each of the staterooms on said vessel, or which there were many, including that of the libelant, to see, among other things, that it was kept clean and in proper order.

VII.

That after the said vessel had left said La Libertad on said voyage to San Francisco, and while she was on the high seas, and on or about the 12th day of October, 1928, the said Blanco entered the stateroom so occupied be the libelant, at about 6 o'clock in the morning, at which time libelant was badly afflicted with seasickness, lying in bed weak and nauseated by said seasickness, and upon entering said stateroom he violently assaulted libelant, and against her will and consent, and against her resistance, forcibly had sexual intercourse with her, by reason of which sexual intercourse libelant became, ever since has been, and now is pregnant with child.

VIII.

That by reason of the matters aforesaid libelant has been damaged in the sum of fifty thousand ($50,000.00) dollars, none of which has been paid.

IX.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court. [6]

WHEREFORE libelant prays that process in due form of law according to the course of this

Honorable Court in cases of admiralty and maritime jurisdiction may issue against the said defendant herein, and that it may therein be cited to appear and answer under oath all and singular the premises aforesaid, and that this Honorable Court will be pleased to decree the payment of the damages aforesaid with costs, and that libelant may have such other and further relief as to the Court is competent to give in the premises.

ERNESTINA ISABELLE VARGAS,
Libelant.

H. W. HUTTON,
Proctor for Libelant.

United States of America,
Northern District of California,—ss.

Ernestina Isabelle Vargas, being first duly sworn, deposes and says as follows:

I am the libelant above named, I have heard the foregoing libel translated and read, and I know the contents thereof, and the same is true of my own knowledge, except as to the matters therein stated on information or belief and as to those matters I believe it to be true.

ERNESTINA ISABELLE VARGAS.

Subscribed and sworn to before me this 21st day of March, 1928.

[Seal] HENRY B. LISTER,
Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed Mar. 22, 1928. [7]

[Title of Court and Cause.]

ANSWER TO LIBEL.

To the Honorable, the Judges of the United States District Court for the Northern District of California:

The answer of Panama Mail Steamship Company, a corporation, to the libel of Ernestina Isabelle Vargas, filed herein, denies, admits and alleges as follows:

I.

Answering unto the allegations of Article I of said libel, admits that Panama Mail Steamship Company was and is a corporation, and that at all times herein mentioned it was and is the owner and operator of the American steamship "Ecuador," but denies that it was or is a corporation organized under the laws of the State of California, and alleges that it was and is a corporation organized under the laws of the State of Delaware.

II.

Answering unto the allegations of Article II of said libel, admits that at all times herein mentioned Panama Mail Steamship Company was a carrier of passengers for hire between ports in Central America and the port of San Francisco, California, and elsewhere. [8]

III.

Answering unto the allegations of Article IV of said libel, admits that libelant took passage on said steamer "Ecuador" at La Libertad, in the Repub-

lic of Salvador, and went on board said steamship at said place and was assigned to stateroom No. 31.

IV.

Answering unto the allegations of Article V of said libel, alleges that it is without information sufficient to form a belief and, therefore, denies that at said time libelant was chaste or unfamiliar with the English language, or that she spoke only the Spanish language, or that she had never traveled on a steamship before, or left her home or her parents.

V.

Answering unto the allegations of Article VI of said libel, admits that there was on board said vessel at said time one Jose Blanco, who was in the employ of Panama Mail Steamship Company as second steward, but denies that he was employed by said Panama Mail Steamship Company to protect passengers, or to see that the wants of all passengers were properly attended to, or to see that the passengers were properly cared for, and denies that the said Jose Blanco was required at times to visit each of the staterooms, but alleges that said Jose Blanco was employed as a second steward and that in such capacity he was subject to the orders and direction of the chief steward, and in general charge of the saloon stewards.

VI.

Answering unto the allegations of Article VII of said libel, denies that when said vessel had left La Libertad on said voyage to San Francisco, or while

she was on the high seas, or on or about the 12th day of October, 1928, at about 6 o'clock in the morning, or at all, the said Jose Blanco entered the stateroom occupied by the [9] libelant, and denies that upon entering the said stateroom, or at all, he violently assaulted libelant, and denies that against her will or consent, or against her resistance, forcibly or at all, had sexual intercourse with her, and denies that because of any such sexual intercourse libelant became or ever since has been or now is pregnant with child.

VII.

Answering unto the allegations of Article VIII of said libel, denies that libelant has been damaged in the sum of Fifty Thousand (50,000) Dollars, or any part thereof, or at all.

VIII.

Answering unto the allegations of Article IX of said libel, denies that all or singular the premises are true.

WHEREFORE, said respondent prays that said libel be dismissed with costs, and that respondent may have such other and further relief as may be meet and equitable.

THACHER & WRIGHT,
Proctors for Respondent. [10]

State and Northern District of California,
City and County of San Francisco,—ss.

C. C. Mallory, being first duly sworn, deposes and says:

That he is the treasurer of Panama Mail Steam-

ship Company, a corporation, respondent herein; that he has read the foregoing answer to libel and knows the contents thereof and that the same is true of his own knowledge except as to those matters which are therein stated on information or belief, and that as to those matters he believes it to be true.

C. C. MALLORY.

Subscribed and sworn to before me this 18th day of April, 1928.

[Seal] KATHRYN E. STONE,
Notary Public in and for the City and County of San Francisco, State of California. [11]

INTERROGATORIES PROPOUNDED TO LIBELANT TO BE ANSWERED UNDER OATH.

1. How old are you?
2. Where were you born?
3. Have you ever been married?
4. If you have been married, what was the name of your husband?
5. When you state that you were assaulted, did you call out?
6. How loud did you call?
7. To what officer did you complain of this attack?
8. To what employees of the ship did you complain of this attack?
9. When did you complain?
10. Why did you not make any complaint regarding this attack?

11. When the ship arrived in San Francisco did you make any complaint to the office of the Company regarding this attack?

THACHER & WRIGHT,
Proctors for Respondent.

[Endorsed]: Service of the within answer and receipt of a copy is hereby admitted this 18th day of April, 1928.

H. W. HUTTON,
Proctor for Libelant.

Filed Apr. 18, 1928. [12]

[Title of Court and Cause.]

SUPPLEMENTAL INTERROGATORIES PROPOUNDED TO LIBELANT TO BE ANSWERED UNDER OATH.

1. Was there a bell in your room at the time of the alleged attack?

2. Did you let Blanco into the room prior to the alleged attack?

3. Did you unlock the door to let Blanco come in?

4. Where did you eat your meals on the S. S. "Ecuador" after leaving La Libertad?

5. Did you give your orders for meals in Spanish or English?

6. To what employee or employees of the vessel did you give your orders?

7. Did such employee or employees speak Spanish?

8. When you reached San Francisco on the S. S.

"Ecuador" and after you left the steamer did you see Blanco again?

9. How many times did you see him?

10. Where did you see him?

11. What were the circumstances of your seeing him?

12. Did you have a meal or meals with him?

13. Who was present at each meal?

14. Have you lived at 180 Fourth Avenue, San Francisco, with your brother and his wife? [13]

15. When did you live at this address?

16. Did you see Blanco when he returned to San Francisco on the S. S. "Ecuador" on its next round trip voyage after the voyage on which you were a passenger?

17. Did you have dinner with Blanco after such second voyage?

18. If so, where did you have dinner?

THACHER & WRIGHT,
Proctors for Respondent.

[Endorsed]: Filed May 31, 1928. [14]

[Title of Court and Cause.]

NOTICE OF MOTION TO DISMISS LIBEL.

To Libelant Above Named and to H. W. Hutton, Esq., Her Proctor.

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE, and you are hereby notified, that on Monday, the 4th day of June, at the hour of 10 o'clock A. M., or as soon thereafter as counsel may

be heard, at the courtroom of the above-entitled court, respondent Panama Mail Steamship Company's proctors will move the Court to adjudge the libelant in default for failure to answer the interrogatories of respondent annexed to the answer of respondent herein, and for an order of the above-entitled court dismissing the libel herein, or for such other order in the case as the Court may deem most fit to promote justice.

Said motion will be made and based upon this notice and upon the records, pleadings and files in this cause and for the reason that the interrogatories numbered 1 to 11 annexed to the answer of respondent herein and propounded to said libelant have not been duly answered by said libelant.

Dated, San Francisco, California, this 29th day of May, 1928.

THACHER & WRIGHT,

Proctors for Respondent, Panama Mail Steamship Company.

[Endorsed]: Filed May 31, 1928. [15]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Monday, the 4th day of June, in the year of our Lord one thousand nine hundred and twenty-eight. Present: The Honorable A. F. ST. SURE, Judge.

[Title of Cause.]

MINUTES OF COURT—JUNE 4, 1928—ORDER DENYING MOTION TO DISMISS LIBEL, ETC.

The motion to dismiss the libel herein and motion for order directing answer to interrogatories came on to be heard, and no one appearing on behalf of the plaintiff, and after hearing attorney for respondent, it is ordered that said motion to dismiss the libel be and the same is hereby denied and that the motion for order directing answer to interrogatories be granted. Further ordered that respondent have leave to file supplemental interrogatories, said supplemental and original interrogatories to be answered by June 14, 1928. [16]

[Title of Court and Cause.]

LIBELANT'S ANSWER TO DEFENDANT'S INTERROGATORIES.

Libelant answers defendant's interrogatories as follows:

For answer to the interrogatory, "How old are you?"

She says, 24 years.

For answer to the interrogatory, "Where were you born?"

She says, San Miguel, Republic of Salvador.

For answer to the interrogatory, "Have you ever been married?"

She says, No.

For answer to the interrogatory, "When you were assaulted did you call out?"

She says, I could not, and it would have been no use to call out.

For answer to the interrogatory, "To what officer did you complain of this assault?"

She says, To the United States Attorney.

For answer to the interrogatory, "To what employee of the ship did you complain of this attack?"

She says, To the second steward, Jose Blanco. [17]

For answer to the interrogatory, "When did you complaint?"

She says, At the time of the attack and afterwards.

For answer to the interrogatory, "When the ship arrived in San Francisco, did you make any complaint to the office of the Company regarding this attack?"

She says, Not right away.

For answer to the supplemental interrogatories, she says as follows:

For answer to the interrogatory, "Was there a bell in your room at the time of the attack?"

She says, There were two.

For answer to the interrogatory, "Did you let Blanco into the room prior to the alleged attack?"

She says, No.

For answer to the interrogatory, "Did you unlock the door to let Blanco come in?"

She says, No.

For answer to the interrogatory, "Where did you eat your meals on the S. S. 'Ecuador'?"

She says, I ate most of my meals on deck.

For answer to the interrogatory, "Did you give your orders for meals in Spanish or English?"

She says, I gave sucy orders in Spanish, or had them interpreted for me.

For answer to the interrogatory, "To what employee or employees of the vessel did you give your orders?"

She says, When I gave an order I gave it to a waiter.

For answer to the interrogatory, "Did such employee or employees speak Spanish?"

She says, Some of the waiters spoke Spanish. [18]

For answer to the interrogatory, "When you reached San Francisco on the S. S. 'Ecuador' and after you left the steamer did you see Blanco again?"

She says, Yes.

For answer to the interrogatory, "Where did you see him?"

She says, On the "Ecuador."

For answer to the interrogatory, "What were the circumstances of your seeing him?"

She says, My brother wished to see him and took my sister-in-law with him to see him and also took me.

For answer to the interrogatory, "Did you have a meal or meals with him?"

She says, No.

For answer to the interrogatory, "Who was present at such meals?"

She says, After I commenced to live in San Francisco, Blanco called on my brother and his wife; he invited them out to meals once, and they took me along.

For answer to the interrogatory, "Have you lived at 180 Fourth Avenue, San Francisco, with your brother and wife?"

She says, Yes.

For answer to the interrogatory, "When did you live at this address?"

She says, I went to live there upon my arrival in San Francisco, and continued to live there *for* or five months.

For answer to the interrogatory, "Did you see Blanco when he returned to San Francisco on the 'Ecuador' on its next round trip voyage after the voyage on which you were a passenger?" [19]

She says, He called on my brother and his wife, and I saw him when he called.

For answer to the interrogatory, "Did you have dinner with Blanco after such second voyage?"

She says, Blanco took my brother and sister-in-law to dinner once, and they took me with them; I think that was the first round trip or voyage.

For answer to the interrogatory, "If so, where did you have dinner?"

She says, I do not know the name of the place.

ERNESTINA ISABEL VARGAS,
Libelant.

United States of America,
Northern District of California,—ss.

Ernestina Isabelle Vargas, being first duly sworn, deposes and says as follows:

I have had the foregoing answers to interrogatories read and interpreted to me, and I know the contents thereof, and the same are true.

ERNESTINA ISABEL VARGAS.

Subscribed and sworn to before me this 13th day of June, 1928.

[Seal] HENRY B. LISTER,
Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed Jun. 14, 1928. [20]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Wednesday, the 12th day of September, in the year of our Lord one thousand nine hundred and twenty-eight. Present: The Honorable A. F. ST. SURE, Judge.

[Title of Cause.]

MINUTES OF COURT—SEPTEMBER 12, 1928 —TRIAL.

This suit came on this day for trial. H. W. Hutton, Esq., appearing as proctor for libelant, and Thomas A. Thacher and W. K. Casey, Esqrs., appearing as proctors for the defendant. Mr. Hutton made a statement to the Court on behalf of the libelant. Jose H. Alfonso was sworn as a Spanish Interpreter. Ernestina Isabelle Vargas, libelant, was sworn and examined in her own behalf, thru said Interpreter. Libelant introduced in evidence and filed certain exhibits marked 1, 2, 3. Anne Russell and William Wesley Swadley were sworn and testified on behalf of defendant. Defendant introduced in evidence and filed its exhibits marked "A," "B," "C." Ordered that the further trial hereof be continued until 10 A. M. to-morrow. [21]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Thursday, the 13th day of September, in the year of our Lord one thousand nine hundred and twenty-eight. Present: The Honorable A. F. ST. SURE, Judge.

[Title of Cause.]

MINUTES OF COURT—SEPTEMBER 13, 1928 —TRIAL (RESUMED).

The parties hereto being present as heretofore, the trial hereof was resumed. Ernestina Isabelle Vargas was recalled. Maurice Shenick, Ralph Vargas, Moises Amarah, Mrs. Mildred Vargas and Emma Julian were sworn and testified on behalf of libelant. Libelant introduced in evidence and filed exhibit marked No. 5. Libelant introduced in evidence the depositions of Curt Zastrow and Russell W. Henry, which said depositions were considered read. Libelant rested. Angela Villavisencio was sworn and testified on behalf of the defendant. Ordered that the further trial hereof be continued until 10 A. M. to-morrow. [22]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Friday, the 14th day of September, in the year of our Lord one thousand nine hundred and twenty-eight. Present: The Honorable A. F. ST. SURE, Judge.

[Title of Cause.]

MINUTES OF COURT—SEPTEMBER 14, 1928 —TRIAL (RESUMED).

The parties hereto being present as heretofore,

the trial hereof was resumed. Anne Russell and Maurice Shenick were recalled. Ned Frederick Lorentzen and Cassius C. Mallory were sworn and testified on behalf of the defendant. Defendant introduced in evidence the deposition of Jose Blanco Reyes, which said deposition was considered read in evidence. Louis T. Grant was sworn and testified on behalf of the defendant in surrebuttal; and the evidence was closed. After argument, it was ordered that this suit be submitted on briefs to be filed in 3 and 5 days. [23]

[Title of Court and Cause.]

TESTIMONY.

Wednesday, September 12, 1928.

Counsel Appearing:

For Libelant: H. W. HUTTON, Esq.

For Respondent: T. A. THACHER, Esq.

TESTIMONY OF ERNESTINA ISABELLE VARGAS, IN HER OWN BEHALF.

ERNESTINA ISABELLE VARGAS, called for the libelant, through Interpreter Jose H. Alfonso, sworn, and testified as follows:

Mr. HUTTON.—Q. What is your name?

A. Ernestina Isabelle Vargas.

Q. How old are you?

A. 24 years; I commenced my 25th year in July.

Q. Where were you born?

(Testimony of Ernestina Isabelle Vargas.)

A. San Miguel, Republic of San Salvador.

Q. Do you speak English? A. No.

Q. Where have you lived all your life?

A. San Miguel.

Q. Is your mother alive? A. No.

Q. How long has she been dead?

A. Three years. [24]

Q. Is your father alive? A. Yes.

Q. What is his business? A. Jeweler.

Q. Where? A. At San Miguel.

Q. Do you know where he was born?

A. At San Miguel.

Q. How many brothers and sisters have you, if any? A. One sister and three brothers.

Q. Where is the sister? A. San Miguel.

Q. Married? A. No.

Q. Have you ever been married? A. No.

Q. What schooling have you had?

A. I have been in school, studying all lines, taking up technical practical courses.

Q. But I mean in San Miguel, what schooling did you have?

A. Primary education, primary schooling, primary instruction for teaching.

Q. Was that a boarding school, or what kind of a school? A. It was a nonboarding school.

Q. How long were you there?

A. That school I attended from the age of seven until I was twelve years old.

Q. Then where did you go after that?

(Testimony of Ernestina Isabelle Vargas.)

A. I became an interne student at the college of Santa Techla.

Q. Where is that?

A. Near the capital of Salvador, about one hour's ride from there.

Q. Where were you living in October, last, living home, or in school, or where?

A. At my father's home.

Q. How long had you been living there, continuously, at that time?

A. From the time that I left college.

Q. When did you leave college?

A. It was about five years.

Q. Then you were in college up to about the time you were nineteen, and you have lived with your father ever since: Is that correct?

A. Yes, since that date.

Q. When was the first time you ever went on board of a steamer, or saw a steamer? [25]

A. The first time I saw a boat was in 1912, when I made a little trip with my mother to the port of La Union.

Q. In October, last year, did you determine to come to San Francisco? A. Yes.

Q. Who, if anyone, were you coming to, or what was the purpose of your coming?

A. I came for the purpose of learning the English language, here, and taking advantage of the fact that my brother was here.

Q. How long had your brother been here?

A. He had been here ten years.

(Testimony of Ernestina Isabelle Vargas.)

Q. What is his business?

A. He works for the firm of Nathan, painting or decorating hats.

Q. Is he an artist, is that what he is? A. Yes.

Q. Now, who provided the money for your passage? A. My father.

Q. Did he give you any other money besides that?

A. Yes.

Q. Who bought the ticket? He furnished the money, but who bought the ticket?

A. My brother.

Q. Did he go down to the steamer and buy it there, or did he buy it in San Miguel, or how?

A. He bought it at the company's office in the capital.

Q. In the capital, San Salvador?

A. San Salvador.

Q. How far is that away from San Miguel?

A. About ten hours; we leave at eight o'clock in the morning, and you get there at four o'clock in the afternoon.

Q. How far is San Miguel from La Libertad?

A. About eleven hours distance.

Q. How far is San Miguel from La Libertad?

A. Eleven hours distance—eleven or twelve hours; I don't know exactly.

Q. When you left San Miguel, did anybody go with you? A. Yes, my brother.

Q. Anybody else?

A. No one ourside of him. [26]

(Testimony of Ernestina Isabelle Vargas.)

Q. When you got down to La Libertad—you went down to La Libertad, did you? A. Yes.

Q. When you got down there was there anybody else there?

A. Yes, my cousin and her husband.

Q. By the way, is San Miguel inland, or on the seacoast?

A. It is to the south on the coast.

Q. Is there any harbor at San Miguel?

A. No, but La Union is the port.

Q. You went on board the steamer "Ecuador" at La Libertad, did you not? A. Yes.

Q. Did anybody go with you, any of your relatives go with you?

A. Only my brother, and my cousin's husband went aboard the ship.

Q. Did they go on board of the vessel with you?

A. Yes.

Q. When you got on board what was done, or what did you do?

A. On entering, we went to the first person that we met, there, to ask for the number of the stateroom.

Q. Who was that, the purser, or steward, or who?

A. The second, Mr. Blanco.

Q. The second what?

A. The second purser, Mr. Blanco, or steward.

Q. What stateroom did you get? A. No. 31.

Q. After you had been assigned to that room, what, if anything, was then done?

A. They showed me the room, and then my

(Testimony of Ernestina Isabelle Vargas.)

brother took me upstairs on deck, to get me a deck chair.

Q. Did he get the deck chair? A. Yes.

Q. Did Blanco have anything to do with that?

A. He told my brother from whom the deck chair could be rented.

Q. Did your brother buy the chair?

A. He bought the seat

Q. From whom?

A. From the person who sells the seats.

Q. Now, did you hear any conversation between your brother [27] and Mr. Blanco, with respect to you?

A. He only asked him if there were any persons aboard who spoke Spanish, and he told him that he spoke Spanish, and that he, in the dining-room, would explain the things that were needed.

Q. Was there any other conversation between them?

A. Only that he offered to help me in ordering my meals, so that he would facilitate my meals, facilitate obtaining my meals.

Q. Did your brother put you in anybody's care on the vessel? A. No.

Q. What did your brother say to Blanco with respect to the facilitation of your meals, and things?

A. Many thanks.

Q. He thanked him for what?

A. Because he offered to tell me in the dining-room everything that I needed, explain it,—to tell me in the dining-room everything that I needed.

(Testimony of Ernestina Isabelle Vargas.)

Q. How long after you went on board did the steamer leave La Libertad?

A. I have not finished the answer. I went aboard the ship at four o'clock in the afternoon, and the vessel left at 8 P. M.

Q. How long did your brother stay aboard after he went aboard?

A. About fifteen minutes, at the most.

Q. Where did the steamer lie, alongside of a wharf, or out in the open sea, at La Libertad?

A. Out in the open.

Q. How did you get out there from the land?

A. In a gasoline launch.

Q. Now, did the sea have any effect on you, or the movement of the ship have any effect on you?

A. Yes, from the moment I got aboard.

Q. What effect did it have?

A. It made me seasick.

Q. Badly seasick, or how? How badly were you seasick? A. Very much. [28]

Q. How long did that seasickness keep up with you? A. Until I arrived here.

Q. Room 31; whereabouts is that? Does it open out in a big room, or how? Describe room 31.

A. With respect to the stairs that go to the dining-room, it is on the right.

Q. Is it on a corridor, or on a big room, or how?

A. It faces a corridor.

Q. How long is the corridor?

A. I think it is about the length of the ship.

Q. You don't know how long it is?

(Testimony of Ernestina Isabelle Vargas.)

A. I do not.

Q. Are there many rooms on that corridor?

A. Yes, there were rooms to the right and rooms to the left.

Q. Were there any passengers in any of those rooms when you went aboard?

A. I did not see anyone enter there.

Q. How was your room with respect to the very end of the corridor?

A. The corridor ran lengthwise of the ship, and my room was to the right.

Q. How close was it to the end of the corridor?

A. A distance of about from the chair to the wall at the extreme end of this room.

Q. That is not what I mean. Up at the other end, were there any rooms between your room and the other end of the corridor, or had you the last one, that is what I mean.

The COURT.—Ask her if her room was at the end of the corridor.

A. Yes.

Q. Up close to the end? A. Yes.

Q. Now, do you know where the vessel went to after she left La Libertad?

A. We left there at night, and the following day we arrived at San Jose de Guatemala.

Q. Was it San Jose, or Acajutla, that you arrived at?

A. We passed off Acajutla, but the vessel did not stop there. [29]

Q. Was it San Jose she stopped? A. Yes.

(Testimony of Ernestina Isabelle Vargas.)

Q. Do you remember what day of the month it was you went aboard the "Ecuador"?

A. It was the 10th of October, at four P. M.

Q. That was last year? A. Yes.

Q. Now, how long did the vessel stay at the next port that you stopped at?

A. A very few hours, about three hours at the most.

Q. Did you eat anything up to the time the vessel left the last port that she called at on the Central American coast?

A. Almost nothing. Most of the time I spent on deck, and there I would get some consomme, and some stuff which they would bring up to me on account of the condition I was in.

Q. Was there anybody in stateroom 31 with you at first? A. No.

Q. How many beds were in the room? A. Two.

Q. Now, on the second night out, that is, the night that you left this last port on the Central American coast, did you go to bed? A. Yes.

Q. About what time?

A. I left my deck chair about nine P. M.

Q. Do you know what time you woke up the next morning?

A. I woke up about five o'clock, because I had a great deal of nausea.

Q. Did you get out of bed at any time that morning?

A. I left the bed for the purpose of opening up the door, because, as I could not go upstairs to get

(Testimony of Ernestina Isabelle Vargas.)

coffee, I thought it was better to have it brought there.

Q. Do they have coffee in the early morning on those vessels? A. Yes.

Q. What time of the morning?

A. About half-past seven or eight o'clock in the morning.

Q. Now, did you try to dress at that time?

A. Yes, but I [30] could not, because I could not sustain myself, and I returned to bed.

Q. Did Blanco come into the room about that time? A. About six o'clock.

Q. How did he get in?

A. The door was without a key, or unlocked, for the reason that I have explained.

Q. Who took care of the cleaning of the rooms on that ship, if you know?

A. I don't know who took care of the cleaning of the rooms, because, from the time that I left the room and went on deck, I did not see anyone.

Q. I mean generally.

A. I think it was a man, because I never saw a woman cleaning the room.

Q. When Blanco went into the room at that time, what was the first thing he did?

A. He came in and he asked me, "How do you feel, from the seasickness?"

Q. What did you say? A. "Quite sick."

Q. Then what happened?

A. He got close to the bed, and he took a hand, which I withdrew.

(Testimony of Ernestina Isabelle Vargas.)

Q. Then what happened?

A. Then he commenced to tell me, to use love phrases, just from the moment I came aboard of the ship, that he had sympathized with me very much, and that he commenced to like me quite a bit.

Q. Go on and tell the whole thing.

A. Then I told him to please do me the favor to keep still, and he got close to me and he took my two hands.

Q. Tell the Court all about it.

A. Then I struggled to loosen myself.

Q. Tell the whole thing. Just go on and tell the Court all about it.

A. When he saw that I was struggling to loosen myself, he took the two hands, and raising them above the level of my shoulders, he did thus, and put them up against [31] the pillow.

Q. What next?

A. Then, having me thus with my hands, he commenced to kiss me. Then he kissed, and as I was struggling against him he would kiss me, and I was struggling against him. I was telling him if he did anything to me he would be afterwards sorry. He would not say anything when I was struggling, he would not use many words, but he would repeat he liked me, and he liked me. As I was only in my nightgown, he finally was able to overcome me.

Q. Did he have sexual intercourse with you?

A. Yes.

Q. Why didn't you call out?

A. In the first place I did not holler out, because

(Testimony of Ernestina Isabelle Vargas.)

it did not occur to me, because I was afflicted with what was happening.

Q. What do you mean by that?

A. Besides, I was telling him to leave me alone, to loosen his grip.

Q. I asked you why you did not call out.

A. Because at that particular moment I did not have courage to cry out, and not knowing who would come to my aid, and my voice might not have been heard, and on account of the noise that there is in the morning aboard ship, I did not think it was possible to be heard.

Q. Did you struggle to the extent of your strength?

Mr. THACHER.—Just a moment; I suggest that the question be made not leading.

Mr. HUTTON.—Q. In that corridor, if you called out, was there anybody close to you, within hearing? Was there anyone close to you, within hearing, in that corridor?

A. I don't know. All I do know is that there was an opening that led to the barber-shop, which was some distance away from there, but at that time in the morning I didn't know whether it was open. [32]

Q. How many times did Blanco kiss you that morning?

A. I don't remember; an indefinite number of times, because every time he would get up close to me in the struggle he would kiss me.

(Testimony of Ernestina Isabelle Vargas.)

Q. Had sexual intercourse ever occurred with you before that time? A. No, never.

Q. After Blanco left you *a one* and got up, what did you say, if anything?

A. I got up and went upstairs, and I sat down, I did not feel well.

Q. But I mean, what occurred in the room, what happened in the room?

A. After the act, he saw me cry, and he told me not to worry, that he would marry me.

Q. Did he say when he would marry you?

A. That if I wanted to, we would get married in San Pedro.

Q. Did you know at that time that he was a married man? A. I did not know it.

Q. Did he ask you to say nothing about it?

A. Yes, he told me to say nothing.

Q. What else did he say?

A. He says for me to say nothing to anyone, that he would be of service to me, that I would not get any advantage through it, because they would not pay any attention to me.

Q. Did he tell you that in the room? A. Yes.

Q. At that time?

A. Yes, at that moment.

Q. What did you say to that?

A. I said nothing; I only cried.

Q. Then when you got out of the room that day, did you talk to the steward, or at any time during that day?

(Testimony of Ernestina Isabelle Vargas.)

A. Yes, I told him, but he did not understand me, because he speaks English, the first steward.

Q. What did you say to him?

A. If there was not some person who could use the stateroom as a companion. [33]

Q. Was that the same day? A. Yes.

Q. Why did you want somebody in there?

A. Because of what had occurred.

Q. You did not want it to happen again. Is that the reason?

A. Yes, I did not want that to occur again; I was very much afraid.

Q. Did they put anybody in the room with you?

A. Yes, that night a young lady came in.

Q. What was her name?

A. I don't know, an unmarried young lady. I know that her name was Angela.

Q. Do you know where she got aboard the vessel?

A. She said that she came from the port of Corrinto.

Q. Was the steamer at Corrinto before she got to La Libertad? A. Yes.

Q. What was she, a saloon passenger, or a steerage passenger?

A. I think she was a steerage passenger, because she came from below.

Q. At any rate, she was on the ship before you were? A. Yes.

Q. Now, at the time that you were struggling with Blanco, and he was consummating what you

(Testimony of Ernestina Isabelle Vargas.)

say he consummated, did anything fall off of your finger?

A. Yes, a ring fell off, which he gathered.

Q. What do you mean by "gathered," picked it up?

A. Yes, gathered up—he got the ring from the floor, and he took it with him; and I don't know whether he wore it, or not.

Q. Where did you get that ring?

A. I brought it with me, because my father was sending it to my brother.

Q. When did you get that ring back?

A. He returned it to me after I went with my brother and asked him for it, after leaving the vessel. [34]

Q. Was that after the steamer got to San Francisco? A. Yes.

Q. That is, did you go home first, and then go back again to the steamer and get the ring?

A. Yes.

Q. Who went with you on that occasion?

A. My sister-in-law and my brother.

Q. Did you have any jewelry with the purser on the "Ecuador"? A. No.

Q. Did you have any money?

A. No, as soon as I left the ship I took the money.

Q. I know, but did you give him any money to keep in La Libertad? A. Yes.

Q. And you took that, then, when you left the ship? A. Yes.

Q. The first time, or the second time?

(Testimony of Ernestina Isabelle Vargas.)

A. The first time.

Q. Then you went back to the steamer for the sole purpose of getting the ring: Is that right?

A. Yes.

Q. Now, after you got to San Francisco did you tell your sister-in-law or your brother about what Blanco had done to you?

A. No, I did not want to tell them, because I did not want to cause a terrible impression, because I had come especially recommended to them in San Francisco.

Q. In other words, then, you did not want to shock them: Is that right? A. Yes.

Q. Now, when you went down to get that ring with your brother and your sister-in-law, did your brother have any conversation with Blanco?

A. Only to tell him that this is the man who had the ring that I brought for him.

Q. Well, I mean, did your brother invite Blanco up to the house?

A. He presented himself, introduced himself to my brother, and he placed himself at his order, and my brother, as a gentleman, also said that he was at his order, and he could visit the house. [35]

Q. As far as you know, Blanco went out again on the ship? A. Yes.

Q. Then he returned again at the expiration of the next trip? A. Yes, he returned.

Q. Now, you had a child, didn't you, by virtue of that sexual intercourse? A. Yes.

(Testimony of Ernestina Isabelle Vargas.)

Q. When did you first come to the conclusion that you were going to have a child?

A. I was five months in that condition, in a family way, when I went to a doctor and consulted with him.

Q. You finally had to tell somebody about this, didn't you? A. Yes.

Q. Who did you tell first about it?

A. I told it to Mr. Amaral, because he is a friend of the family, because I didn't know how to avoid the shock.

Q. Why didn't you tell your brother first?

A. Because I did not have the valor to tell him, as I was afraid it would shock him too much.

Q. Then you told Amaral. What did Amaral say to you?

A. I told Amaral I didn't know what to do, that I am in such a condition, that I would like to leave this place and go somewhere else, because I am afraid to shock my brother too much.

Q. What did Amaral tell you to do?

A. Amaral told me not to be so terribly shocked, that we had some remedy, and that he would take it up with my brother, and he would tell my brother.

Q. You finally went down to the United States Attorney, did you?

A. Yes, after Amaral had spoken to my brother, my brother and my sister-in-law went to see the United States Attorney.

Q. And you finally went down, did you not, to Mr. Krull's office, [36] here? A. Yes.

(Testimony of Ernestina Isabelle Vargas.)

Q. Was that the next day, or next week, or how long afterward?

A. The next day we came to present the complaint here in this building.

Q. Then what happened?

A. I entered my declaration here, and then the next day they asked me if that was the individual that I accused.

Q. So you came down here the next day?

A. Yes.

Q. Did you come alone, or was your brother and sister-in-law with you?

A. No. Mr. Amaral accompanied me, because both of them work.

Q. But I mean the day that you testified before Commissioner Krull, were you alone that day?

A. No, that day I was with my brother and Mr. Amaral.

Q. The day that Blanco was in Krull's office, were they with you that day? A. Yes, they were.

Q. Were you working at that time?

A. Yes, I was working at that time at Nathan's, making hats.

Q. Did you go to work as soon as you arrived in San Francisco? A. No.

Q. How long after you arrived?

A. I went to work about February or March after arriving here.

Q. Before that, did you go to school?

A. Yes, at that time I went to the Hamilton evening school.

(Testimony of Ernestina Isabelle Vargas.)

Q. What did you study? A. Only English.

Q. On the day after you were in Mr. Krull's office, did you go down to the office of the Panama Mail Steamship Company?

A. Yes, the day that I was here with Mr. Blanco, they told me to go to the office of the Panama Mail Steamship Company, the day of the 16th of March.

Q. Who told you to go?

A. The detective, who was the interpreter present in court. [37]

Q. Is he present here now?

A. He was present at that time.

Q. Was Mr. Krull there? A. Yes.

Q. Was Blanco there?

A. Yes, Blanco was there.

Q. Do you know whether the port steward of the Panama Mail Steamship Company was there?

A. I don't know whether he was a party, or not, but there was a gentleman there who give me a card, telling me to go to the office of the company.

Q. Then you went down the next day, did you not?

A. We went to the company's office, and they told us—

Q. (Interrupting.) Wait a minute, who went with you? A. Mr. Amaral and my brother went.

Q. When you got down there who was there?

A. Only the gentleman who gave me the card. Afterwards Mr. Blanco came.

Q. Have you got that card now?

A. Yes, Mr. Amaral has it. I gave it to him.

(Testimony of Ernestina Isabelle Vargas.)

Q. Could you understand the conversation there? Was it in English or Spanish?

A. It was in English.

Q. Did you understand it?

A. No. Mr. Amaral translated.

Q. Did he translate it right in the office?

A. He told me, leaving the office, that Mr. Blanco said that when the vessel returned he would pay all expenses incident to the birth of the child, and the hospital.

Mr. THACHER.—If your Honor please, I move that that part be stricken out as a mere repetition of a conversation by an interpreter, hearsay.

The COURT.—It may go out.

Mr. HUTTON.—It may be stricken out. Of course, I can prove that in another way.

Q. Now, as the days passed, where did you go to? Did you leave San Francisco?

A. Yes, I left San Francisco and went to Santa Rosa, and went to the house of a Mrs. Moody. [38]

Q. Why did you leave here?

A. I left here because even though no one knows me, the friends of my brother who would come there would make me feel ashamed, knowing that I was unmarried, that I was in that condition.

Q. How long did you stay in Santa Rosa?

A. A month and a week.

Q. Then where did you go?

A. Then I came to St. Elizabeth Hospital, on Masonic Avenue.

Q. Do you remember what date you got there?

(Testimony of Ernestina Isabelle Vargas.)

I arrived the 30th, the day that they celebrate the dead man's decoration day—the 30th of May.

Q. That is a charitable institution? A. Yes.

Q. For what purpose did you go there?

A. Because it was a hospital, and because the care was not costing me too much.

Q. You stayed there up to what period, do you know?

A. I remained there until two weeks after the birth of the child.

Q. When was the child born?

A. The child was born on July 19, at 2:30 P. M.

Q. What is it, a male or a female? A. A male.

Q. When did your labor pains commence?

A. I commenced to feel them on the 18th, at 11 P. M.

Q. Were they very severe? A. Yes.

Q. Did you become unconscious?

A. Yes, I was very weak.

Q. What I mean, did you ever lose your senses during that period? A. Yes.

Q. Did you suffer very much pain?

A. Yes, I thought I was going to die.

Q. Is that what the hospital people thought, do you know?

A. I don't know whether they thought that, but I do know that they did have to get another doctor from another hospital [39] to help me.

Q. How long were you in those pains?

A. Up until the time that the child was born, which was at 2:30 P. M. the next day.

(Testimony of Ernestina Isabelle Vargas.)

The COURT.—We will take a recess until two o'clock.

(A recess was here taken until two o'clock P. M.) [40]

AFTERNOON SESSION.

ERNESTINA ISABELLE VARGAS, direct examination (resumed).

Mr. HUTTON.—Q. I think you said you were in the hospital two weeks, that is, after the child was born.

A. Yes.

Q. How long were you confined to your bed after the child was born? A. One week.

Q. Where is the child now?

A. A lady is taking care of it.

Q. You are paying for its care? A. Yes.

Q. You have gone to work again?

A. Yes, I returned to work.

Q. Where are you working now?

A. On Mission Street.

Q. About what number, or whereabouts?

A. I don't remember the number of the firm.

Q. What are you doing there?

A. Fitting and sewing dresses.

Q. How long have you been working there?

A. One week—I commenced last week; previously I had worked on the hats.

Q. After Mr. Blanco had assaulted you, as you testified to this morning, what was the condition of the bed, the bedclothes?

(Testimony of Ernestina Isabelle Vargas.)

A. The bedclothing were almost clean, because, with the exception of this part of the body, the rest was uncovered, and I was almost on the edge of the bed.

Q. Describe the condition of the bedclothing, as to whether they were stained, or not.

A. No, the clothing was not stained, but he was stained, because he was dressed in white.

Q. What did he do with reference to the bed, if anything? A. What do you mean?

Q. Who cleaned the room up that morning, or who made up the bed that morning? Did he do it, or the boy do it, or who?

A. I don't know who made it up, because I left and the bed remained unmade. [41]

Q. Did Blanco say anything to you about it, about who was going to make the bed up?

A. No, he did not say anything other than to tell me not to be afflicted or worried, that he was going to support me, and that he was going to marry me.

Q. Now, does the face of the baby resemble Blanco?

Mr. THACHER.—Just a minute: I object to that question. I do not think it is proper evidence, and I think it is inadmissible, on the ground it is immaterial, irrelevant, and incompetent.

Mr. HUTTON.—Yes, it is admissible. Sometimes, in jury cases, they bring the child, so that the jury can pass on it.

The COURT.—Overruled.

A. Yes.

(Testimony of Ernestina Isabelle Vargas.)

Mr. HUTTON.—Q. How heavy a man is Blanco? Is he a big man, or a small man, or a tall man, or a short man?

A. He is a man of low stature, and stout.

Q. Very stout, or otherwise?

A. I can't say how high he is, but he is heavy, stout.

Q. I am not very clear as to who was down in Commissioner Krull's office, at the time you went there, at the time that Blanco was there.

A. The first time that I was there he was not there, but the second time when I was he was.

Q. Who else was there?

A. The man who gave me the card.

Q. Was your brother there that second time?

A. Oh, yes, he just simply came to bring me there, but did not go in.

Q. Was Amaral there?

A. Oh, no, they only asked me to come in.

Q. Where were the other two, where were Amaral and your brother at that time?

A. They remained in the corridor, outside.

Q. Is that the card, or a copy of the card, that was given to you on that occasion? [42]

A. Yes, this is it.

Q. Who gave you that?

A. The gentleman who accompanied Blanco.

Mr. HUTTON.—I will offer that in evidence, as Libelant's Exhibit 1.

(The document was marked Libelant's Exhibit 1.)

(Testimony of Ernestina Isabelle Vargas.)

Q. Then you went down there the next day with Mr. Amaral and your brother?

A. Yes, the 16th of March.

Q. Was the man who gave you that card there?

A. Yes, he was in a little office on the wharf.

Q. At Pier 46? A. Yes.

Q. Is that the wharf that the steamer "Eucador" landed on the trip that you came up?

A. Yes.

Q. The same wharf? A. Yes.

Q. How much a month does it cost you to keep that baby?

A. I pay the lady for taking care of it $25, and also $6 for milk.

Q. Have you ever seen that before?

A. Yes, these cards, they gave us in Los Angeles, in San Pedro, the day we arrived there.

Q. Who gave it to you?

A. They left them in the dining-room.

Q. You found this in the dining-room of the Eucador"?

A. No, that one was given to me by a little child who had been in the dining-room. I did not go down to the dining-room.

Q. Did you get that on the "Ecuador"?

A. Yes.

Q. Before you arrived, or when?

A. The night that we arrived in San Pedro, after the passengers had eaten, a child came with it and gave it to me.

Q. Did the child have more than one?

(Testimony of Ernestina Isabelle Vargas.)

A. No, only one; I asked for it.

Q. Asked who? A. I asked the child for it. [43]

Mr. HUTTON.—Have you any objection to it?

Mr. THACHER.—It has no purpose. I am perfectly willing that it go in.

Mr. HUTTON.—It has this purpose. It purports to be the literature of the company. It has their name on it. There is on it the name of the "Eucador," and it gives the number of passengers, and her name is among them.

Mr. THACHER.—We are not contesting that she was a passenger.

Mr. HUTTON.—No, but there is some dispute as to the number. I will offer it as Libelant's Exhibit 2.

(The document was marked Libelant's Exhibit 2.)

Q. Have you ever seen that?

A. Yes, this arrived at the house, it came to the house, but I don't know what it is.

Q. Did you ever see the inside of it?

A. Yes, I saw it, and I handed it over to my brother.

Q. Do you know anything about that?

A. This is from the hospital where I was, and it is the account that they sent me, the bill.

Q. Both of them?

A. Yes; one is for the time the child remained there after he was born, and the other one is for the doctor's attention.

(Testimony of Ernestina Isabelle Vargas.)

Q. They are bills connected with the birth of the child? A. Yes.

Q. One for $15, and the other for $47?

A. Yes.

Mr. HUTTON.—I suppose you have no objection to them?

Mr. THACHER.—No.

Mr. HUTTON.—I will offer these as Libelant's Exhibit 3.

(The documents were marked Libelant's Exhibit 3.)

Mr. HUTTON.—I will ask to have that marked for identification, because I may want to examine Mr. Shenick on it. [44]

(The document was marked Libelant's Exhibit 4 for identification.)

Mr. HUTTON.—That is all.

Cross-examination.

Mr. THACHER.—Miss Vargas, you are twenty-four years old, or twenty-five years old, which is it?

A. When I arrived I was 24, but in July I entered my twenty-fifth year.

Q. Are you here permanently? In other words, were you on the immigration quota?

A. At the time I left there I paid the immigration tax, because I came here for an indefinite time, as I came for the purpose of learning the language, the English language.

Q. Then I understand, when you arrived here you

(Testimony of Ernestina Isabelle Vargas.)

went to night school for about four weeks, in order to learn the English language?

A. I had gone four weeks to school, but I did not continue attending, because of the condition I was in.

Q. After you left school you went to work, as I understand it, for a millinery company?

A. Yes, I went to school at night, and afterwards I went to work.

Q. You went to school for four weeks, and then you went to a millinery company? A. Yes.

Mr. THACHER.—I would like to call a witness out of order.

TESTIMONY OF ANNE RUSSELL, FOR DEFENDANT.

ANNE RUSSELL, called for the defendant, sworn.

Mr. HUTTON.—This is for the defense?

Mr. THACHER.—It is for the purpose of the cross-examination of the libelant.

Q. As I understand it, Miss Russell, you took the testimony of Ernestina Isabelle Vargas at the hearing before Commissioner [45] Krull on March 15, 1928. A. Yes.

Q. And you transcribed your notes? A. Yes.

Q. Will you identify these sheets as your notes?

A. These are the notes that I took.

Q. That is true and correct?

A. A true and correct transcription, yes.

(Testimony of Anne Russell.)

Mr. HUTTON.—What are you going to do with this?

Mr. THACHER.—I am going to cross-examine your witness, in the first place, and I am probably going to offer a good deal of the transcript in the second.

Mr. HUTTON.—Do you think it has been identified?

Mr. THACHER.—I think it has been identified sufficiently. I have offered it to Miss Russell, and she has identified it, as a transcription of her notes, and all of the notes of the testimony given by Miss Vargas.

Mr. HUTTON.—Q. Have you got everything down there that occurred before Commissioner Krull? A. Everything.

Q. Everything? A. Everything.

Q. The conversation between Mr. Shenick and Mr. Krull, and Mr. Hatfield, and whatever Blanco said, if he said anything?

A. I have everything that transpired at that hearing written here.

Q. Is there anything there about going down to the company's office the next day?

A. To the company office? Which company's office?

Q. Panama Mail Steamship Company.

A. There was nothing said about that at that hearing.

Q. Was there anything said at all that day about it? A. Nothing whatever.

(Testimony of Anne Russell.)

Q. What have you got there, just what Miss Vargas said, or have you got anything about what anybody else said? [46]

A. I have here the questions put to Miss Vargas by Mr. Hatfield, and her answers thereto. That is all that took place at that hearing.

Q. There was nothing said by Commissioner Krull, at all, I mean right at that hearing?

A. Commissioner Krull made one statement at the last of the transcript, which appears there—asked her that question, to which she replied.

Q. No conversation, there, at all?

A. What do you mean by no conversation?

Q. No conversation between Commissioner Krull and Mr. Hatfield, or Mr. Krull, and Mr. Blanco, and Mr. Sheneck? A. No.

Q. Nothing at all, said about that?

A. Nothing at all said about that.

Mr. HUTTON.—All right.

TESTIMONY OF ERNESTINA ISABELLE VARGAS, IN HER OWN BEHALF (CROSS-EXAMINATION RESUMED).

ERNESTINA ISABELLE VARGAS, cross-examination (resumed).

Mr. THACHER.—Q. You say, Miss Vargas, that you came here under a student's permit?

Mr. HUTTON.—I do not think that is material.

Mr. THACHER.—I think it is material.

Mr. HUTTON.—I object to it.

The COURT.—Overruled.

(Testimony of Ernestina Isabelle Vargas.)

A. No. I said that I came here to learn the language. They asked me if I had paid an immigration tax, and I said yes.

Mr. THACHER.—Q. Were you on the immigration quota, if you know?

A. I don't know. My brother was the one who paid it.

Q. Miss Vargas, you remember going before Commissioner Krull and testifying on March 15, 1928?

A. Yes.

Q. And you went before Commissioner Krull in order to send Blanco to prison, or to be hung for criminal assault? [47]

Mr. HUTTON.—That is objected to as calling for a conclusion. The complaint she swore to would be the best evidence of what she did.

The COURT.—Sustained.

Mr. THACHER.—Q. What did you go there for?

A. Down below, here?

Q. Yes.

A. I went to prefer charges against him for the case that had occurred. They took my evidence, and an old man acted as interpreter, and afterwards the detective.

Q. I think she had better confine herself to the questions, as far as possible. Just tell her that, if you will, Mr. Interpreter.

A. Yes, I appeared before the Commissioner.

Q. You were careful, in view of the fact that it was a criminal charge, to state the truth, were you not? A. I told the truth.

(Testimony of Ernestina Isabelle Vargas.)

Q. At that time?

A. Yes, I always said the truth.

Q. Did you testify at that time as follows:

"Q. Did you lock the door"—

Mr. HUTTON.—Wait a minute. Ask her whether this was given through an interpreter.

A. Yes.

Mr. HUTTON.—I object to his reading from this, if your Honor please, upon the ground that the interpreter has to be present. This is what the interpreter stated. The rule of law is, if your Honor please, when testimony is given through an interpreter, the interpreter has to be brought here, and he is permitted then to read this over and testify as to whether it is correct, and I object to it on the ground it is incompetent, and the proper foundation has not been laid.

The INTERPRETER.—The witness adds this to her answer, "but he did not know how to interpret Spanish very correctly."

The COURT.—The objection is overruled. [48]

Mr. HUTTON.—I take an exception to that.

The COURT.—Ask the question.

Mr. THACHER.—Q. Did you testify at that time as follows— (Addressing the interpreter.) I think time will be saved if you begin reading right down that page.

The COURT.—Ask her if she did not testify as follows:

Mr. HUTTON.—Now, if your Honor please, this

(Testimony of Ernestina Isabelle Vargas.)

proceeding is supposed to be in English. He is reading in Spanish, and the reporter cannot get it.

The COURT.—Do you want him to read it in English, and then read it to her in Spanish?

Mr. HUTTON.—He ought to read it in English, and then we will know what it is all about.

The COURT.—Read it in English, first.

The INTERPRETER.—"Q. Now, describe the cabin, as to what was in it; what were its furnishings? A. Two beds, two wash basins, a wardrobe."

A. Yes.

"Q. Was there a bell, so that you might ring for the attendant or the steward? A. Yes, there was a bell."

A. Yes.

"Q. And as a matter of fact, weren't there two bells, one by each berth? A. Yes."

A. Yes.

"Q. The two berths were separate; they weren't one on top of the other? A. Yes."

A. Yes.

"Q. And the bell was right there where the person in the bed might reach it without getting up? A. Yes, so that you could put your hand over your head and ring it."

A. Yes.

"Q. Now, what kind of a lock was there on the door of the cabin? A. There was a lock with a key."

A. Yes.

(Testimony of Ernestina Isabelle Vargas.)

"Q. Could you lock the door from the inside? A. Yes." [49]

A. Yes.

"Q. Did they also have an additional latch? A. Yes, there was a bolt."

A. Yes.

"Q. And that bolt, if it were turned, couldn't be opened from the outside? A. No, it couldn't be opened from the outside, closed that way."

A. Yes.

"Q. Did you lock the door every night that you occupied that stateroom? A. Yes."

A. Yes.

"Q. Did you turn the bolt? A. Yes."

A. Yes.

"Q. And a person on the outside couldn't release that bolt? A. No."

A. Yes.

"Q. There were no transoms? A. No."

A. Yes.

"Q. The boat has an attendant or steward who makes the beds and cleans up the rooms and answers the bell? A. There might have been; I never saw him."

A. Yes.

"Q. Did you make the bed? A. Never while I was there; when I came the beds were made."

A. Yes.

"Q. Well, somebody else made up the bed? A. Somebody else made up the bed; I didn't."

A. Yes.

(Testimony of Ernestina Isabelle Vargas.)

"Q. Did you have friends on board the boat? A. Luis Enrique Leon and his wife, and another young man, Enrique Wolf."

A. Yes.

"Q. Did you talk with Mrs. Leon? A. Yes, when I met her on the boat, or when we happened to meet down below."

A. Yes.

"Q. Was this molesting that was done you on the morning of the 12th or the 11th? A. The 12th."

A. Yes.

"Q. On the morning of the 12th, was that the only time that you were molested? A. Yes."

A. Yes.

"Q. Who was it that molested you? A. That man sitting there."

A. Yes. [50]

"Q. What is his name? A. Jose Blanco Reyes, that is, that is the name he gave me."

A. Yes.

"Q. What was the position that he occupied on the boat; was he a passenger or a member of the crew? A. He was second steward."

A. Yes.

"Q. Now, tell in your own language just what occurred on the morning of the 12th. A. On the morning of the 12th, I found myself very seasick; I got up and unlocked the door, between 6 and 6:30 o'clock."

A. Yes.

(Testimony of Ernestina Isabelle Vargas.)

"Q. Why did you open the door? A. I thought I might be able to go out."

A. Yes.

"Q. Were you dressed? A. No."

A. Yes.

"Q. Were you in the habit of opening the door before you got dressed? A. I got up; I don't know why exactly that I opened the door, but I wasn't dressed, only in night clothes."

A. Yes.

"Q. What did you do after opening the door? A. I went back and lay down again."

A. Yes.

"Q. Is that all you did when you got up? A. Yes."

A. Yes.

"Q. Just got up and opened the door? A. Yes."

A. Yes.

"Q. Just unlocked the door and closed it? A. Yes."

A. Yes.

"Q. But when you unlocked it, you unlocked both the key and the bolt? A. Yes, put the bolt back, unlocked the door, and then went to lie down."

A. Yes.

"Q. Did you open the door, leaving it ajar, or did you close it? A. I left it shut."

A. Yes.

"Q. But you left it unlocked? A. Yes."

A. Yes.

"Q. All you did when you got up at 6 in the

(Testimony of Ernestina Isabelle Vargas.)

morning was to [51] unlock the door and go back to bed? A. Yes, that's all."

A. Yes.

"Q. You had been very sick during the night? A. Yes, during all this trip."

A. Yes.

"Q. But were you very sick during that night? A. Yes, threw up a great deal."

A. Yes.

"Q. After you went back to bed, what happened? A. The door opened, and this gentleman entered, and asked how I was."

A. Yes.

"Q. What time was that? A. Probably 6:30 or 7 o'clock, I don't remember exactly."

A. Yes.

"Q. You said earlier that you got up and left the room at 7. At what time did you leave the room the morning of the 12th? A. I left the room about 8 o'clock the morning of the 12th."

A. Yes.

"Q. Was he standing in the doorway when he asked you how you felt? A. No, the door was shut. He opened the door and walked in."

A. Yes.

"Q. Did he stand by the bed or near the bed? A. Near the bed at the first words."

A. Yes.

"Q. Was the door shut? A. He shut the door."

A. Yes.

(Testimony of Ernestina Isabelle Vargas.)

"Q. Did he lock it? A. I don't know."

A. Yes.

"Q. What was said then? A. He asked me if I wanted some coffee."

A. Yes.

"Q. And after that? A. I said I wanted none."

A. Yes.

"Q. And after you said you wanted no coffee, what was further said? A. He came to the bed and took my hand and talked to me."

A. Yes.

"Q. What did he say? A. He said he cared a great deal for me."

A. Yes.

"Q. Did he say that immediately after you said you wanted [52] no coffee? A. Yes, immediately after offering the coffee, and I refused it. Immediately after I refused the coffee, he took my hand."

A. Yes.

"Q. Was this the first conversation you ever had with him? A. Yes, never before."

A. Yes.

"Q. You never at any time had any conversation with him, even when you came on the boat? A. Yes, when I came up the gang-plank he spoke to me."

A. Yes.

"Q. What did he say? A. He asked if there

(Testimony of Ernestina Isabelle Vargas.)

was anything that he could do for me, and said he would be glad to serve in any way."

A. Yes.

"Q. What did you say? A. I thanked him."

A. Yes.

"Q. And that was the only other conversation you had up to that time *what* that fellow? A. Yes."

A. Yes.

"Q. You are quite positive? A. Yes."

A. Yes.

"Q. As a matter of fact, didn't you go to him and give him some rings to keep for you? A. Yes, he met me and spoke to me, asking if he could help me, and I gave him a ring which was too big for me, to keep for me."

A. No.

Mr. THACHER.—Q. No what?

A. I did not say that. They asked me if I had made a gift of a ring, and I told them no, that the ring had fallen and he had gathered it up and took it with him.

Mr. THACHER.—Repeat to her the question and answer which she gave.

The INTERPRETER.—"Q. As a matter of fact, didn't you go to him and give him some rings to keep for you? A. Yes, he met me and spoke to me, asking if he could help me, and I gave him a ring which was too big for me, to keep for me."

A. No, what I did say was that the ring had

(Testimony of Ernestina Isabelle Vargas.)

fallen on the floor, and that he gathered it up and kept it [53] for me.

Mr. THACHER.—Continue.

The INTERPRETER.—"Q. What day was that? A. I don't remember what day it was."

A. No.

Mr. THACHER.—Q. There was not any testimony like that?

A. No.

Mr. THACHER.—Read the next question and answer.

The INTERPRETER.—"Q. Was it before he came in on the 12th? A. Yes."

A. No.

Mr. THACHER.—Q. No testimony like that?

A. No.

Mr. THACHER.—Continue.

The INTERPRETER.—"Q. Or was it afterwards?"

The WITNESS.—That was after he picked the ring from the floor.

Mr. THACHER.—Just read that question and answer.

The INTERPRETER.—"Q. Or was it afterwards? A. I think it was afterwards."

"Q. How many days afterwards? A. I don't remember how many days after."

"Q. But it was one or two days after the 12th? A. I don't know; I can't positively say."

A. As to the one or two days, what I referred to was when he asked me on the passageway leading

(Testimony of Ernestina Isabelle Vargas.)

to the stair that the ring was too big for me. That is what I referred to.

The INTERPRETER.—"Q. The truth is, that you had only one conversation with him before he entered your room, that being the one you testified to, when you walked up the gang-plank? A. Yes, only one."

A. Yes.

"Q. And the conversation relating to the ring was after the episode on the 12th? A. Yes, after the 12th."

A. Yes.

"Q. And just what occurred at that time? Where was it [54] that you met him and gave him the ring? A. I met him on the stairway; I don't know whether he was going up or down, but he might have been just there."

Mr. THACHER.—Is that correct?

A. Yes, after that was when I had that conversation, I was passing by and he told me that the ring was too big.

Q. You mean that is what she is testifying to now? A. Yes.

Mr. THACHER.—Continue.

The INTERPRETER.—"Q. And what happened? A. Nothing more than that he asked if he could serve me, and I spoke of the ring." Is that correct?

A. No, that is not true. What he asked me was, he asked me if he could be of any service to me just after I went aboard of the vessel.

(Testimony of Ernestina Isabelle Vargas.)

Mr. THACHER.—Q. Then that testimony is totally incorrect, it was several days after the 12th?

A. After the 12th he found me up on the stairs, and then it was when he told me that that ring was too big for me.

Q. Too big for whom? A. Too big for me.

Q. That meant too big for you, or for Blanco?

A. That it was too big for me.

Mr. THACHER.—Will you read that to her again, Mr. Interpreter?

The INTERPRETER.—"Q. And what happened? A. Nothing more than that he asked if he could serve me, and I spoke of the ring."

A. No.

Mr. THACHER.—Q. What did you say? Did you testify that way, or not?

A. No, that he asked me was when he was with my brother.

Q. So that that question and answer there is totally incorrect; nothing like that was testified to?

A. Yes. [55]

Mr. THACHER.—Read the next question.

The INTERPRETER.—"Q. What did you say exactly? A. When he offered his services, I told him that I was bringing this ring to my brother, and asked him to take care of it for me."

A. No.

Mr. THACHER.—Q. There was not any such testimony given by you?

A. No.

Q. Nothing like it? A. No.

(Testimony of Ernestina Isabelle Vargas.)

Mr. THACHER.—Continue.

The INTERPRETER.—"Q. What kind of a ring was it? A. A gold ring."

A. Yes.

"Q. With a stone? A. No, only initials."

A. Yes.

"Q. What were they? A. R. A. V."

A. Yes.

Mr. THACHER.—Q. All that testimony is correct that he has just been reading?

A. Yes, they asked me that.

The INTERPRETER.—"Q. Was it a new ring? A. Yes.

"Q. That you had bought to present to your brother? A. My brother brought it on the steamer to give our brother up here."

A. No. The correct answer is, I brought it aboard of the vessel and gave it to my brother, here.

Mr. THACHER.—Q. That testimony that "My brother brought it on the steamer," is incorrect?

A. Yes.

The INTERPRETER.—"Q. What was the name of the brother there who did this? A. Leonido Vargas."

A. They asked me who made the ring, and I said that my brother, Leonido Vargas, made the ring.

Mr. THACHER.—Q. So that the question, "What was the name of the brother there who did this?" was not asked?

A. They asked me who had made the ring, where

(Testimony of Ernestina Isabelle Vargas.)

I had obtained it, and then I said that my brother, Leonido Vargas, had made it.

Q. But that other question was not asked you, and the answer [56] given, "My brotner brought it on the steamer to give our brother up here"?

A. That is incorrect.

Mr. THACHER.—Continue.

The INTERPRETER.—"Q. This time that you gave Jose Blanco Reyes on the stairway the ring was the first time that you saw him after the molesting of the morning of the 12th? A. Yes."

A. That is not correct. This time that I met Jose Reyes on the stairway was when he told me that the ring was too big for me.

Mr. THACHER.—Q. There was no such question as the following asked, then: "Q. This time that you gave Jose Blanco Reyes on the stairway the ring was the first time that you saw him after the molesting of the morning of the 12th?"

Mr. HUTTON.—Wait a minute. If your Honor please, it is the answer she is concerned with, not the question.

The COURT.—You are asking her whether she answered it. "Yes"?

Mr. THACHER.—I am referring to the answer.

A. It was not for the purpose of giving him the ring; the only thing he told me was the ring was too big.

Mr. THACHER.—I asked you if there was any such question as that asked you, and what you replied to it, if it was asked you.

(Testimony of Ernestina Isabelle Vargas.)

A. No, they asked me when it was that I had seen or spoken once more to Jose Blanco.

Q. Then they did not ask you the question that has just been read? A. No.

Mr. THACHER.—Continue.

The INTERPRETER.—"Q. That was the first time that you saw him after the 12th, the first conversation that you had with him?

A. Yes.

"Q. He took the ring from you? A. Yes." [57]

A. They asked me if he had took the ring, to which I answered "Yes."

Mr. THACHER.—They did not ask you the following question and the following answer was not given: "Q. That was the first time that you saw him after the 12th, the first conversation that you had with him? A. Yes."

A. Yes, that question they did ask me, that was the first time that I saw him after the 12th, and then I answered that in passing through the corridor, near the stairway, I spoke to him for the first time.

Q. You said that in answer to that question?

A. Yes, in reply to that question I said that.

Q. But the reporter did not take it down?

A. But it was not for the purpose of giving him the ring; it was only for the purpose of him telling me that that ring is too big for me.

Q. You testified, however, in answer to the question, "That was the first time that you saw him

(Testimony of Ernestina Isabelle Vargas.)

after the 12th, the first conversation that you had with him,"—you answered "Yes."

A. Yes.

The COURT.—Proceed.

The INTERPRETER.—"Q. He took the ring from you? A. Yes."

A. Yes. When I came to the vessel to get it he had it on.

The COURT.—Continue.

The INTERPRETER.—"Q. Did he put it on his finger? A. Yes."

"Q. And did he give it back to you at the end of the trip? A. Yes."

A. Yes, he gave it to me, but after I arrived with my brother to bring it, to get it back.

"Q. When? A. The day I arrived at San Francisco.

"Q. And he wore the ring during all that time? A. I think so; I saw it on him several times."

A. Yes. [58]

"Q. You never asked him for it during that time? A. No, I never asked him to give it back."

Mr. THACHER.—That is correct?

A. Yes.

The INTERPRETER.—"Q. I want to go back to the morning of the 12th; when he came into the room, he shut the door, walked over to your bed, and asked you how you were feeling; you said that you were very ill; he then asked you if you wanted any coffee. You said no, and he grabbed hold of

(Testimony of Ernestina Isabelle Vargas.)

your hand, and said that he was quite infatuated with you."

A. Yes.

"Q. And what did you do when he said that? A. I told him that I didn't want to have anything to do with him."

A. Yes.

"Q. Exactly what did you say? A. He kissed my hand, and said that I pleased him very much; that he would be very good to me, and would care for me, and that he has noticed me as soon as I came on the boat."

A. Yes.

"Q. How did he embrace you? A. He took my hands and kissed me. He kissed me wherever he could, and I moved my head."

A. Yes.

"Q. Did you kiss him? A. I resisted."

A. Yes.

"Q. How did you resist? A. By trying to throw him off."

A. Yes.

"Q. Did you hit him? A. I could not; he held both my hands."

A. Yes.

"Q. You were not dressed at this time? A. No, I had on only a night dress.'

A. Yes.

"Q. Did he attempt to remove the night dress? A. No, he didn't try to tear it off."

A. Yes.

(Testimony of Ernestina Isabelle Vargas.)

"Q. Were the bedclothes over you? A. Yes.

"Q. What were the bedclothes, sheets, blankets, or what? A. I had a sheet over me, that's all."

A. Yes.

"Q. Did he pull the sheet off? A. Yes.

"Q. And what did you do when he did that? [59] A. I was helpless; I couldn't do anything."

A. Yes.

"Q. Did he have copulation with you? A. Yes.

"Q. Did you cry out? A. No, I did not."

A. Yes.

"Q. Did you ring the bell? A. No.

"Q. As a matter of fact, isn't it the truth that you didn't fight with all the strength you had?

"A. No, I resisted with all the strength I had."

A. Yes.

"Q. Did he take off his clothes? A. No.

"Q. You knew what was happening to you, didn't you? A. Yes, I realized what was going to happen."

A. Yes.

"Q. Did you scratch him at all or hit him? A. No, I couldn't do anything. He had both of my hands and was lying on top of me, and I was helpless."

A. Yes.

"Q. What happened after he had consummated the act? A. He got up and went out very quickly."

A. Yes.

(Testimony of Ernestina Isabelle Vargas.)

"Q. What did he say? A. He didn't say anything.

"Q. Is that all the conversation you had there? A. He told me not to worry, that if anything resulted he would take care of me."

A. Yes.

"Q. And what did you say? A. I didn't say anything; I was so completely exhausted.

"Q. Did he kiss you when he left? A. No."

A. Yes.

"A. That's all he said; 'If anything happens, I'll take care of it.' "

"Q. Well, how long after he left did you get up? A. I don't remember exactly how long it was, but I got up about 8 o'clock.

"Q. What did you do when you got up? A. I went to breakfast."

A. Yes.

"Q. Did you tell anyone about this? A. No; I said nothing to anybody. [60]

"Q. You didn't talk to the captain? A. No; he only spoke English."

A. Yes.

"Q. Weren't there any employees who spoke Spanish? A. Yes, most of the servants spoke Spanish, and the other passengers spoke Spanish, but I said nothing to them."

A. Yes.

"Q. When you landed in San Francisco the 21st of October, did your brother meet you at the dock?"

A. I make correction, that the majority of the

(Testimony of Ernestina Isabelle Vargas.)

passengers were Americans, and Mr. Leon and the other young man spoke English.

"Q. When you landed in San Francisco the 21st of October, did your brother met you at the dock? A. Yes.

"Q. Is your brother married? A. Yes.

"Q. Did you tell your brother or your sister-in-law? A. No; I didn't want to say anything to anybody.

"Q. Why not? A. I had decided to suffer my disgrace alone, without telling anybody."

A. Yes.

"Q. Did you introduce Reyes to your brother? A. No.

"Q. When was the last time that you saw Reyes before now? A. When I got off the boat to meet my brother, I didn't have the ring, and I told my brother about it, and we went back to get the ring from Reyes."

A. Yes.

"Q. What happened? A. He gave me the ring.

"Q. Did you present him to your brother? A. Yes, I introduced him at that time, and said that he had taken care of the ring for me."

A. No. He presented himself to my brother and I told him he is the man who has the ring.

"Q. And your brother shook hands with him? A. Yes.

"Q. Did you see this man after that time? A. Yes, he came to the house.

(Testimony of Ernestina Isabelle Vargas.)

"Q. He visited at your house? A. Yes, he had dinner there.

"Q. How many times? A. Two visits."

A. Yes. [61]

"Q. Did you invite him? A. No, he just offered to come.

"Q. You didn't refuse to have him? A. No, my brother didn't, because he didn't know anything about it.

"Q. Did you go out with him to the shows, or in San Francisco, to dance? A. He invited my brother and I went too."

A. No, I make this correction. My brother, my sister-in-law and I went to a restaurant, but not to any dance.

"Q. Your brother and sister-in-law and yourself went with this man? A. Yes.

"Q. As a matter of fact, you have been out alone with him? A. Never.

"Q. Did he ever have any relation with you again? Did he ever try it? A. No."

A. Yes.

"Q. Did he never kiss you? A. No.

"Q. Never? A. No.

"Q. Have you been to a show or dance together? A. No, only when my brother and sister went with us. We went to a theatre and to some place in Chinatown."

A. Yes.

"Q. To dance? A. No, it was a cafe.

"Q. When did you learn he was married? A. I didn't know it; he told me he wasn't married."

(Testimony of Ernestina Isabelle Vargas.)

A. Yes.

"Mr. KRULL.—Q. How did you happen to make this complaint after such a long time? A. The reason that I didn't complain was that I didn't know I was in this condition until I went to a doctor, and I had to explain to my brother."

A. Yes.

Mr. HUTTON.—I will ask to have that filed with the clerk for the use of counsel for the libelant.

Mr. THACHER.—It is perfectly satisfactory.

The COURT.—You have already got it in evidence.

Mr. HUTTON.—I may want to examine it.

Mr. THACHER.—I will offer it in evidence. [62]

Mr. HUTTON.—I object to it on the ground it is immaterial, irrelevant, and incompetent.

The COURT.—You are asking to have it offered.

Mr. HUTTON.—No, I am just asking to have it filed.

Mr. THACHER.—I offer it as defendant's exhibit.

(The document was marked Defendant's Exhibit "C.")

Mr. HUTTON.—I want to say, I have been trying ever since that was taken to get a copy from the United States Attorney, and never have been able to get one.

Mr. THACHER.—We subpoenaed it.

Q. As I understand it, you came on board the ship at approximately four o'clock on October 10?

A. Yes.

(Testimony of Ernestina Isabelle Vargas.)

Q. Then you had dinner on board the ship?

A. No, I did not have dinner. I remained above, because I did not have any appetite.

Q. Didn't you testify before Commissioner Krull that you had dinner on the ship that night you went aboard?

A. They asked me if I had been at dinner in the dining-room of the vessel, and I said yes, but I went upstairs without dining.

Q. What time did you have breakfast the next day, on the 11th?

A. I went at the time that they rang the bell, but I did not have any breakfast; I went upstairs again, and the boy came to bring a little consomme.

Q. What time was that?

A. I suppose that they rang the bell about 12 o'clock, I did not carry any watch.

Q. About what time?

A. About twelve o'clock.

Q. Didn't you testify "I left it," meaning the stateroom, "about seven o'clock, when the bell rang for breakfast"?

A. Yes.

Q. Then you went out to breakfast at seven o'clock? A. Yes.

Q. What time did you have lunch?

A. I don't know whether [63] they rang the bell at eleven or twelve o'clock.

Q. But about that time? A. Yes.

Q. What time did you have dinner that day?

A. I think that they rang the bell about eight o'clock.

(Testimony of Ernestina Isabelle Vargas.)

Q. That was at eight o'clock that night?

A. Yes.

The COURT.—Do I understand that you ate your breakfast and your dinner and your supper that day?

A. No, that day I did not eat at midday; I went downstairs, but did not eat, nor did I have supper, because I could not hold the food.

Mr. THACHER.—Q. You were out around the deck all day on the 11th, weren't you?

A. Yes, all day.

Q. And you went to your cabin about 7:30 that night of the 11th? A. No, at nine o'clock.

Q. At nine o'clock? A. Yes.

Q. And the next morning you had your breakfast at eight o'clock, the morning of the 12th?

A. I did not return to the dining-room.

Q. Did you not testify, referring to the 12th, "I left it"—referring to the room—"about seven o'clock, when the bell rang for breakfast"?

Mr. HUTTON.—That has nothing to do with having breakfast. She left the room then.

A. Yes, I left at that hour to go to breakfast, but I did not go to the dining-room. I remained on deck because I could not stand up.

Mr. THACHER.—Q. And they had some breakfast sent up to you on deck?

A. And I remained seated.

Q. You had breakfast sent up on deck?

A. Yes.

Q. At eight o'clock?

(Testimony of Ernestina Isabelle Vargas.)

A. I don't know whether it was at that time, because I did not carry any watch.

Q. When you got up here to San Francisco, as I understand it, Blanco had one dinner up at the house of your brother with you and your sister-in-law? A. Yes. [64]

Q. And you had no objection to having dinner there with him?

A. I did not say anything, because at that time he had already invited them, and that was in order to correspond or reciprocate the dinner that they had on that occasion.

Q. Didn't he ask you to dinner after you had asked him to dinner?

A. No, I did not invite him, only he invited my brother—the day that he arrived he invited my brother for us to go out to dinner with him, and afterwards my brother wanted to pay him back, and invited him to dinner.

Q. You went out to dinner with your brother and your brother's wife, on his invitation? A. Yes.

Q. And you went to the theatre after you had dinner, did you?

A. Yes, we went to a theatre.

Q. You did not have any objection to accepting invitations along with your brother as guests of Blanco, did you?

A. We did not want to accept, but he was so insistent that we finally accepted.

Q. Your brother, when the ship came back, had Blanco out to dinner again, didn't he? A. No.

(Testimony of Ernestina Isabelle Vargas.)

Q. Didn't you have dinner with Blanco after the first time?

A. No; on the second occasion was when he came to the house to dine.

Q. He came to the house to dine?

A. On the second occasion.

Q. Wasn't that when the ship came back the second time? A. Yes.

Q. All of this time you did not know that you were in a family way? A. No.

Q. You were friendly enough with Blanco up to that time?

A. I hardly spoke to him when he arrived at the house.

Q. But when he came back the second time, did he bring various presents to your brother and sister-in-law?

A. What he did [65] was to give my brother a present of a pair of shoes, but as my brother never liked to accept any presents, he made him a present of a cushion.

Q. Did he bring a parrot, or a canary, or something of that kind?

A. No, he offered my sister-in-law a parrot, but he did not bring it; he sent from the vessel a canary bird.

Q. To your sister-in-law? A. Yes.

Q. Then didn't your brother give him some hats?

A. No, he placed an order for some hats, and my brother turned his order in to the firm of Nathan.

(Testimony of Ernestina Isabelle Vargas.)

Q. Why was it that you unlocked your door about six o'clock in the morning of the 12th?

Mr. HUTTON.—She has already explained that, if your Honor please.

The COURT.—Overruled.

A. Because I wanted to ask for some coffee, to have it brought up to the stateroom.

Mr. THACHER.—Q. Did you ring for coffee?

A. No.

Q. Why didn't you ring for coffee if you wanted it? A. Because it was not time yet.

Q. Then why did you open the door so early?

A. Well, I opened it because I was thinking of getting up and without its occurring to me that someone might come in.

Q. But it was not because of the coffee?

A. Yes, it was; I opened it for coffee.

Q. If it was for the coffee, why didn't you accept the coffee that Blanco, when he first came into the room, offered to give you?

A. Because he offered to give me coffee, and I knew that a messboy would bring it, I did not want to accept any favors from him.

Q. Why didn't you want to accept any favors from him, if he [66] was the second steward, and you never had a word with him, except going up the gang-plank?

A. Up to that time I did not know he was second steward.

Q. But did you think that he was one when he came into the room?

(Testimony of Ernestina Isabelle Vargas.)

A. Any employee of the vessel?

Q. Didn't you know, when he came into the room, that he had no business there?

A. Then I didn't know anything.

Q. Why didn't you ring the bell when you saw him coming in there?

A. Because I didn't think he came with any bad intention; I did not think he was a man of that type.

Q. When he came in he sat down by your bed, did he not? A. No.

Q. Wasn't he sitting down when he took your hand first?

A. No, he was standing at the edge of the bed.

Q. Standing at the edge of the bed? A. Yes.

Q. And he took your hand? A. Yes.

The COURT.—We will take an adjournment now until to-morrow morning at ten o'clock.

(An adjournment was here taken until to-morrow, Thursday, September 12, 1928, at ten o'clock A. M.) [67]

Thursday, September 12, 1928.

ERNESTINA ISABELLE VARGAS, cross-examination (resumed).

Mr. THACHER.—Q. Miss Vargas, how many beds were there in this stateroom? A. Two.

Q. Which one did you occupy?

A. The one that was close to the wall, toward the exterior of the vessel.

(Testimony of Ernestina Isabelle Vargas.)

Q. Could you identify it from these pictures, which one it was?

A. Pointing to the upper photograph, the right-hand one.

Q. It is the one which is marked No. 1 on the back? A. Yes.

Q. I am marking an arrow. What does that arrow point toward? A. It points toward the bell.

Q. As I understand it, Miss Vargas, you never complained to any of the officers or crew regarding Blanco while you were on the ship?

A. I did not complain to any of them in the first place, because they did not speak Spanish, and, in the second plate, because they might consider me a woman of ill repute or bad conduct.

Q. Didn't all of the boys on board that vessel speak Spanish?

A. I did not speak with any one of them, other than with a boy who brought me the food, and he asked me what did I wish to eat.

Q. You did not know which of the officers spoke Spanish, then? A. No.

Q. As I understand it, you did not complain about Blanco for several months after you arrived in San Francisco. A. Yes.

The COURT.—Ask her about that lady whom she knew on board.

Mr. THACHER.—Q. As I understand it, you had several friends on board?

A. Only Mr. Leon, his wife, and the little [68] fellow who came to study here.

(Testimony of Ernestina Isabelle Vargas.)

The COURT.—Did Mrs. Leon speak Spanish?

A. Yes.

Q. Why didn't you go and complain to her about this treatment of you?

A. I only saw her twice in the dining-room; those were the only times that I saw her, because nearly all the time she would stay in her stateroom.

Q. If your feelings were outraged, why didn't you go at once to Mrs. Leon and complain to her?

A. I did not have any confidence in her, she was not any friend, other than an acquaintance, a mere acquaintance aboard.

Q. Where did you meet her?

A. The next day after having boarded the ship I saw her in the dining-room.

Q. Did you know her before you went aboard ship?

A. No, never; she was a passenger from Colombia.

Q. You knew she was a passenger from Colombia, didn't you?

A. Yes, she came on the passengers' list; her name was in the passenger list.

Q. How old a woman was she?

A. About 25 to 30 years, something like that; she was married, and had a five-year old child.

Mr. THACHER.—Q. Did you complain to Angela about Blanco?

A. I did not know Angela.

Q. Angela was your room-mate, was she not?

A. Yes.

(Testimony of Ernestina Isabelle Vargas.)

Q. She slept in the same cabin with you all the way to San Francisco?

A. She spent from the 12th day onward.

Q. Did you complain of Blanco to her?

A. I never spoke a word to her other than to ask her from where she came.

Q. She spoke Spanish, did she not?

A. Yes, she is a Nicaraguan.

Q. She was in your room for ten days?

A. Yes.

Q. You never complained about Blanco to her?

A. No, I did not [69] have any confidence; she was not an acquaintance of mine, either.

Q. On what finger did you wear this ring that you spoke of?

A. On the index finger, because it was too large.

The COURT.—Where is the ring?

A. My brother has it on him.

Mr. THACHER.—Q. When did you put the ring on first?

A. From the first time that I went aboard the vessel, the first day I went aboard, I put it on.

Q. And it was loose? A. Yes.

Q. Will you put that ring on?

A. It does not slip on, because it is shortened; it don't fit me; it was made smaller. I could not say who the person was that reduced the size of the ring.

Q. Do you mean to tell me that this ring was reduced in size? A. Yes.

(Testimony of Ernestina Isabelle Vargas.)

Q. Can you put that ring on any of your fingers now, and if so, do it.

A. On the next to the last finger, on the third finger of the right hand.

Q. How was this ring lost?

A. Well, at the time of the struggle it became loosened.

Q. I thought you testified yesterday that he simply held your hands.

Mr. HUTTON.—Wait a minute. I do not think that is fair to the witness, because she testified yesterday she struggled and resisted to the best of her ability.

The COURT.—I know, but this is cross-examination, Mr. Hutton.

A. Yes, he did grab my two hands, and then held them up above the level of my shoulders, as you know, held them thus.

Mr. THACHER.—Q. Where did the ring fall?

A. To the floor.

Q. He stole this ring? A. He gathered it up. [70]

Q. And you saw him with the stolen ring for all of the rest of the voyage, wearing it?

A. I saw him wearing a ring on the hand, but I didn't know if that was the one.

Q. Didn't you testify before the United States Commissioner that that was the ring he was wearing?

A. No, I said that I did see him wearing a ring, but I didn't know whether that was the ring; but

(Testimony of Ernestina Isabelle Vargas.)

that when I went with my brother to get the ring that that was the ring that he had on.

Q. And the ring that you saw him wearing looked like the ring that you had on—the ring that you saw him wearing around the boat looked like the ring he had on? A. Yes.

Q. And when he first came into the stateroom, was that the time he locked the door?

Mr. HUTTON.—Wait a minute. I object to that, if your Honor please, on the ground that she has never testified yet in this case that he locked the door, or she locked the door after he went in. That is assuming a fact not in evidence, and not fair cross-examination.

Mr. THACHER.—I will change the question.

Q. When, if at all, did he lock the door?

Mr. HUTTON.—I submit the testimony is that she did not know.

The COURT.—I will sustain the objection.

Mr. HUTTON.—You have no right to put a trick question to her.

Mr. THACHER.—Q. State whether Blanco locked the door.

A. Yes, he locked the door, but I don't know if he locked it with a lock.

Q. But he locked the door when he first came in?

A. Yes.

Q. How far was the door from your berth?

A. Pointing to the small table by the reporter, with her right index finger [71] of her right hand, a distance approximately to the second table,

(Testimony of Ernestina Isabelle Vargas.)

where the first rug terminates—the table adjoining the reporter's small table. Then taking her hand and pointing again with the index finger, from this small chair to that table.

Q. The door was about as far off as I am from you, from where you were lying?

A. A little further.

Q. That is about ten feet?

A. About where you are now standing.

Q. You, lying in your berth, saw this man come into your stateroom, turn around, and lock the door?

A. He came in, and then took my right hand and put it toward the back of me, thus, and closed the door; he did not turn around.

Q. He dragged you from your berth to the door while he closed it and locked it? A. No.

Q. Explain again how he entered the room and locked the door.

A. He came in and then thrust *her* hand back and then thrust the door backward.

Q. Do you mean that he came inside of the stateroom, stood at the door facing you, placed his hand behind him, and slipped the bolt?

A. No, I did not say that he put the bolt in; only he came in and pushed the door shut.

Q. Do you know whether it was locked, or not?

A. Yes, it was closed, because in the act of going out he opened the door.

Q. Was it locked with a bolt, or key, or anything? A. No.

(Testimony of Ernestina Isabelle Vargas.)

Q. When you saw him come in and close the door at this distance, why did you not sing out?

A. Because I did not think he came in with bad intentions, because at the moment of entering, he asked me, "Miss, how do you feel, how are you?"

A. He later on took your hand, didn't he?

A. Immediately in the act of saying these words he kept on walking, and took [72] my hand.

Q. When he took your hand, why didn't you call out?

A. Because it didn't occur to me, I did not know that that man entered with bad intentions. What I did do was to withdraw my hand forcibly.

Q. When he commenced to stand there and tell you that he cared for you, from the moment he had met you on the gangplank, why didn't you call out?

A. Because at that moment it did not occur to me. I felt such a fear that it did not occur to me, because at that moment that I withdrew my hand he grabbed both arms.

The COURT.—Q. If you felt fear why didn't you scream?

A. Because at that moment it did not occur to me to cry out; the only thing that occurred to me was to defend myself.

Mr. THACHER.—Q. How did you defend yourself?

A. Well, I moved my body and did everything that was possible to loosen my hand.

Q. He had one of your hands in each of his hands? A. Yes.

(Testimony of Ernestina Isabelle Vargas.)

Q. Just explain to the Court how the attack occurred.

A. He grabbed my hand, and when I finally was able to withdraw my hand, then afterwards he grabbed my hand here, pointing toward the sacrum, and I managed, then, in my struggle, I was able to get to the edge of the bed.

Q. But you did not call out at any time?

A. No, I only supplicated and entreated him to leave me alone, if he did anything, that I had my family, and that he would greatly repent it.

Q. Did you strike him in the face, or scratch him?

A. I did not have the chance, because my hands were held.

Q. Well, at one time didn't he hold both of your hands with his hand?

A. Yes, he did hold my two hands, but not with [73] his two hands. It was one hand—pointing with her arm—at first he took her left arm and then took her right arm, and thrust it toward her shoulder, and held it against my body, as he was very heavy. Taking the interpreter's left hand, he held it at an angle, in about such a position off the interpreter's breast, and extended it across the body; with one hand thus he would hold me, and that part of the body he would hold with his arm.

Q. When you told him to leave you alone, what did he say?

A. He said to me that he liked me very much,

(Testimony of Ernestina Isabelle Vargas.)

and that is all he would tell me, that is all he would repeat to me.

Mr. THACHER.—Q. You say that when you got up it was too early for coffee when you unlocked the door.

Mr. HUTTON.—Wait a minute; the lady never said that, at all, if your Honor please.

Mr. THACHER.—Yes, she did.

Mr. HUTTON.—She said it was coffee time.

The COURT.—I don't remember what she said. I will sustain the objection.

Mr. THACHER.—Q. What time was it when you unlocked the door?

A. It was a few minutes before they rang the bell.

Q. What bell is that?

A. The bell that they ring, which I suppose is for the purpose of calling to breakfast the steerage passengers, third-class passengers, or the second-class passengers.

Q. Did you look at your watch at that time?

A. I did not have any watch.

The COURT.—Q. How did you know what time it was?

A. I did not know; for that reason I said I did not know precisely what the hour was, but I presume that it was either six or half-past six. [74]

Q. Was that the first time you had unlocked the door at that hour?

A. Yes. That was the first morning that I opened it at that hour.

(Testimony of Ernestina Isabelle Vargas.)

Q. I would like to know why you unlocked the door then and left it unlocked. She unlocked the door, as I understand it, and left the door unlocked, and went back to bed. I would like to know the reason why.

A. I got up from the bed for the purpose of washing my face, and when I found that I could not stand up I then opened the door for the purpose of having coffee brought up to me.

Q. Did you ring for coffee?

A. No, I had not as yet.

Q. Where was the sexual act performed that you complain of? A. In the bed.

Q. In the bed, or on the side of the bed?

A. Almost on the edge of the bed. My legs were up, and then taking her two hands, and holding them over her thus, beyond the edge of the bed. Then, again, illustrating, placing her hands about six inches above her knees from this part upwards, that part of the body upwards, and this part over the edge of the bed.

Q. Did Blanco put his hand on your leg?

A. No, he only put one hand on the leg to lift the leg on the bed. Pointing with her hand to the left leg, that was the position that he took, and I could see it in front of me.

Q. You do not want the Court to understand that he was holding you with both of his hands all the time,—that is, that he was holding your hands with both of his hands all the time, do you?

A. He had both hands most all the time, except

(Testimony of Ernestina Isabelle Vargas.)

for one moment he withdrew a hand, but I don't know whether it was for the purpose of lowering his pants, or not, but that was the only time when both of his hands did not hold my two hands. [75]

Q. Well, if you were fighting him, or struggling against him, explain how he did perform this act?

A. I don't know for what purpose it was he withdrew his hand, but I do know that he did, and that I was struggling against him.

Q. Who spread your legs apart?

A. One of his legs budged my legs apart and got in the center.

Q. Did you suffer any pain when the sexual act was performed? A. Yes.

Q. Was there any blood, or anything, on your nightgown or the sheet?

A. He threw my nightgown up, and whether there was any blood, or not, on the sheet, I did not take notice, because they were all bundled up. I do know that when I put on my drawers I did stain them.

Q. Stain them with what? A. With blood.

Mr. THACHER.—Q. When Blanco came in at first he asked you whether you did not want some coffee, didn't he? A. Yes.

Q. You declined coffee? A. Yes.

Q. Although you had opened the door in order that you could get coffee? A. Yes.

Mr. THACHER.—That is all.

(Testimony of Ernestina Isabelle Vargas.)

Redirect Examination.

Mr. HUTTON.—Q. You said yesterday that the interpreter that they had before Commissioner Krull was not a good interpreter. What did you mean by that?

A. That it took considerable effort to make myself understood literally with them when they spoke to me.

Q. Could they talk good Spanish? A. No.

Q. How many were there—how many interpreters were there there?

A. First they used a very old man, and then they used a detective, and then they used the young lady who presented herself here yesterday. [76]

Q. Did they use her as an interpreter?

A. Yes.

Q. So there were really three interpreters, then, down before Commissioner Krull?

A. Yes, first an old man who wears glasses, and then they brought me to another room where this detective interpreted for them, and then, the following day, that they called me again, they used as interpreter this young lady, referring to the yound lady who appeared here yesterday, and the detective again.

Q. Now, it was read here yesterday to you that one of the reasons that you did not make any complaint about this was you preferred to carry your disgrace alone. Was that correct? A. Yes.

Q. Now, Mr. Thacher asked you yesterday

(Testimony of Ernestina Isabelle Vargas.)

whether you were around the deck of the vessel on the way up, and you said yes. Do you mean by that that you walked around the deck, or what do you mean? Do you mean that you walked around the deck, or what did you do when you were on deck?

A. All that I did was to walk from the door that led to the deck, to the chair that was near by—the deck chair was near by.

Q. What did you do during the day, walk around, or stay in the chair?

A. I remained seated in the deck chair during the day, and likewise during the remainder of the days.

Q. You were also asked yesterday on cross-examination about going to breakfast. Did you eat any breakfast on the vessel?

The COURT.—I understood her to say that she did not eat much. I think you have gone into that sufficiently.

Mr. HUTTON.—Q. Did you eat any morning in the dining-room of that boat, at all, before it reached San Francisco?

A. Once I went down during the lunch hour, and another time at breakfast. [77]

Q. During the whole trip? A. Yes.

Q. Not, it was also brought out on cross-examination that you were vomiting all night before this morning of the 12th of October. Did you vomit very much?

(Testimony of Ernestina Isabelle Vargas.)

A. Yes, from the time that I came aboard the vessel I had nausea, or vomited.

Q. But I mean that particular night before, did you vomit very much?

A. Yes, I had a feeling of a great deal of nausea, and I vomited a good deal, but I could not hardly vomit anything, because I had not eaten anything to speak of. All that I did vomit was a sort of bile.

Q. Did that go on all night, or only a portion of it?

A. During the night previous to the 12th I had to get up twice to vomit into the washstand.

Q. You vomited bile? A. Yes, bile.

Q. Now, when did you first find out that Blanco was married? A. Here in the courtroom.

Q. Do you mean down in Commissioner Krull's office, or here?

A. In Commissioner Krull's room.

Q. When you were upon the deck of the vessel, could you see when the passengers came aboard that day? A. No.

Q. You mentioned about some Chinamen that occupied the rooms, some of the rooms on that corridor you were on. After you went into Room 31, when did those Chinamen come aboard?

A. It must have been after we had arrived at a port in Guatemala that they boarded the vessel, and one of them changed his stateroom because it was too close to the engine-room, and it was overheated.

(Testimony of Ernestina Isabelle Vargas.)

Q. Do you know whether or not any Chinamen came aboard at the next port that you called at after you left La Libertad? A. I don't know.

Mr. HUTTON.—That is all. [78]

Recross-examination.

Mr. THACHER.—Q. You say that one Chinaman changed his room, his stateroom, because it was overheated?

A. Yes, because he said that his stateroom was too close to the engine.

Q. Who told you that?

A. The Chinaman's wife.

Q. The Chinaman's wife? A. Yes.

Q. Did she speak Spanish?

A. Yes, she was a South American.

Q. You used to talk Spanish with her?

A. No, only that time—only that time she had changed her stateroom.

Q. Who were those friends of yours that you had on board the vessel, Mrs. Leon?

Mr. HUTTON.—Now, if your Honor please, that is not fair to the witness. She said she had not any friends on board, at all. Now he says, "Who were the friends that you had on board?" That is simply a trick question.

The COURT.—I don't understand she had any friends on board.

Q. Did you have any friends on board?

A. The Leon family and that young man who came there, who got aboard at Guatemala.

(Testimony of Ernestina Isabelle Vargas.)

Mr. THACHER.—Q. What was the name of the young man that got on board at Guatemala?

A. Enrique Wolff.

Q. He was coming up here to study.?

A. He said he came here to study.

Q. How much did you used to see of the Leon family, and of Enrique Wolff?

A. The Leon family I saw twice in the dining-room, where her husband talked Spanish, and ordered a meal for me there.

Q. How about Enrique Wolff?

A. He had the deck chair next to me, and on the other side of him there was a Chinaman.

Q. And Enrique Wolff, whose deck chair was next to you, used [79] to speak Spanish?

A. He spoke very little, because he also was seasick, and likewise the Chinaman on the other side of him.

Q. Didn't you used to dance with this man Wolff on board?

A. No, it was only once that I invited him to dance—not Mr. Wolff, but a party who spoke very little English, I think he was German.

Q. Where did you dance with him, on the way up to San Francisco?

A. Finally, I did not dance, at all. I simply said that because they were talking about dancing, and said, "Well, I will invite you to dance."

Mr. HUTTON.—Q. Did you dance?

A. No, just talked about it. [80]

TESTIMONY OF MAURICE SHENICK, FOR LIBELANT.

MAURICE SHENICK, called for the libelant, sworn.

Mr. HUTTON.—Q. What is your occupation?

A. I was port steward of the Panama Mail Steamship Company.

Q. Are you that now? A. No.

Q. You were the port steward for years, weren't you? A. Yes, for a long while.

Q. For how many years?

A. The last time a little over a year and a half, I was away. I came from the Oceanic, I was port steward over there.

Q. In March last year were you port steward?

A. Yes.

Q. You had an office, had you? Yes.

Q. Where was the office? A. Dock 46.

Q. San Francisco? A. San Francisco.

Q. And as port steward you hired, did you not, all of the culinary help, chief steward, second steward, etc.?

Q. Well, the chief steward, I recommended the chief steward.

Q. And the chief steward would recommend a second steward to you: Is that correct?

A. Well, sometimes. Sometimes I put them on, myself.

Q. What supervision, if any, had you over the employees of the culinary department?

(Testimony of Maurice Shenick.)

A. Gave them their instructions, what to do.

Q. And it was part of your duty to see that the ships were operated so that the passengers would be taken care of?

A. My work is the food department, seeing that the departments were clean; I had nothing to do with passengers, at all, outside of seeing that they were fed.

Q. You were there to see that the food was put on the ship? A. Yes.

Q. How about the help on the ship?

A. In what way? [81]

Q. In the selection of them, and the supervision over them, had you anything to do with that, at all?

A. To a certain degree, yes.

Q. To a degree?

A. To a certain degree, yes.

Q. Now, have you ever seen one of these before?

A. Yes.

Q. Who issues these?

A. Well, it all depends on where they are made.

Q. Are they issued by the Panama Mail Steamship Company? Is that a part of their literature?

A. Yes, that is a part of their literature.

Q. Was it in October, last year?

A. I presume so, yes.

Q. They operated the "Ecuador" at that time, did they? A. Yes.

Q. How large a ship is she?

A. She is listed at 12,000 or 14,000 tons, something like that.

(Testimony of Maurice Shenick.)

Q. And the "Columbia," they operate her?

A. Yes.

Q. Any other ships besides? A. Yes.

Q. What ones?

A. They operate the "Ecuador," the "Columbia," and "Venezuela."

Q. How large is the "Columbia"?

A. They are all the same size, of the "Ecuador," "Venezuela" and "Columbia," are supposed to be sister ships.

Q. Where do they operate? Where do they run from? A. From here to New York.

Q. And return? A. And return.

Q. That is one of the cards that you had at that time, is it not? A. Yes, that is my card.

Q. Do you remember who you gave that particular card to? A. Yes.

Q. Did you give it to this young lady? A. No.

Q. Who did you give it to?

A. I think I gave it to her brother, or the man that was with her. [82]

Q. The brother?

A. I don't know whether it was the brother, or some young man, a little heavy set fellow.

Q. Did you give it to him in this office, here?

A. No.

Q. Where?

A. Down in some other office in the building, here.

Q. You say you did not give it to the young lady?

A. No, I did not.

(Testimony of Maurice Shenick.)

Q. Are you certain about that?

A. Yes, I am sure about that.

Q. You did talk to the young lady?

A. I did not talk to the young lady.

Q. You saw her here, didn't you?

A. Not here, downstairs.

Q. You saw her down on the floor below?

A. Wherever it was, yes.

Q. Do you remember what date that was?

A. No, I do not.

Q. Now, you subsequently saw the young lady the next day down in your office? A. I did.

Q. And her brother was there?

A. And another man.

Q. Who else was there?

A. They brought some heavy set fellow, a young fellow with them.

Q. Have you seen him out in the corridor?

A. No.

Q. Haven't you seen him out in the corridor yesterday and to-day? A. No, I did not.

Q. Never saw him out there? A. No.

Mr. HUTTON.—I would like to have Mr. Amaral called in. (Mr. Amaral is brought into the courtroom.)

Q. Is that the man that you saw down in your office the day after you were up in Mr. Krull's office?

A. This man looks something like him: I think he looks like him.

Q. Is he the man that you gave the card to?

A. I think he was, yes; *that* him, yes.

(Testimony of Maurice Shenick.)

Q. You think he was?

A. I think he was the man that I gave the card to.

Q. He has been out in the corridor all day yesterday, and you were there all day yesterday, weren't you?

A. I was, but I did not pay any attention to him.

[83]

Q. You have been standing at the door, out there—you stood there all day yesterday, and all this morning? A. Yes, I did.

Q. Didn't you see him around there during the whole of that time? A. Yes, he has been there.

Q. Now, you think you did?

A. Yes, I have seen him.

Q. By the way, did these people come down to your office at your invitation?

A. They did not.

Q. What? A. They did not.

Q. They did not? A. No, they did not.

Q. Did anybody come there at your invitation?

A. No.

Q. Were you surprised when they got there?

A. I was not.

Q. You were not surprised? A. No.

Q. This young lady, and Amaral, and her brother went down to the office the next day, didn't they?

A. They asked if they could come down.

Q. They went the next day? A. Yes.

Q. You say you were not surprised at their coming?

(Testimony of Maurice Shenick.)

A. No. They asked me where my office was, and I handed the young man my card.

Q. Where? A. Downstairs, here.

Q. In the building, here? A. Yes.

Q. Then they went down the next day?

A. Yes.

Q. When they went down there the next day you say you were not surprised at their coming?

A. No.

Q. Did you expect them to come?

A. I did not expect anything; they said they wanted to know if they could come down.

Q. Who asked you that?

A. This young man, here.

Q. Amaral? A. Yes.

Q. They went down, did they? A. Yes. [84]

Q. You don't know what they went for?

A. No, I have not the least idea.

Q. You don't know anything about it?

A. They talked in Spanish, I could not tell you.

Mr. HUTTON.—That is all.

Mr. THACHER.—No questions.

TESTIMONY OF RALPH VARGAS, FOR LIBELANT.

RALPH VARGAS, called for the libelant, sworn.

Mr. HUTTON.—Q. Mr. Vargas, how old are you?

A. 27.

Q. You are the brother of Ernestina Vargas, the libelant in this case? A. Yes.

(Testimony of Ralph Vargas.)

Q. Where do you live? A. In San Miguel.

Q. Where do you live? I did not ask you where you were born. Where do you live?

A. 1204 Fourth Avenue.

Q. San Francisco? A. San Francisco.

Q. How long have you been living here?

A. Ten years.

Q. Now, let me see that ring on your finger.

A. Yes.

Q. When did you first see that ring?

A. When I came to Pier 46.

Q. Well, now, what happened that day; you went down to the dock to meet your sister, didn't you?

A. Yes.

Q. Just answer my questions. You went down to meet your sister? A. Yes.

Q. Did you see her down on the dock? A. No.

Q. Where did you see her?

A. She came to the house before I did, a fellow that came with her, or family that came with her, took her to the house, and then they rang my wife.

Q. Did you ring your wife?

A. No, these people rang my wife, and then they said that they had my sister there, because [85] we could not get there on time when the boat got here.

Q. What were you doing down on the dock?

A. Well, just waiting for my sister; they told us that the boat was going to be on the other side of the ferry, and that is why I got there late.

(Testimony of Ralph Vargas.)

Q. You got there late, and when you got there you found your sister gone? A. Gone.

Q. She gave you a letter, did she? A. Yes.

Q. After you got that letter, what did you do, you and her and your wife?

A. Well, I asked her for the ring.

Q. What ring?

A. For a ring that my father sent.

Q. What did she say?

A. She said a fellow that worked on the boat took it away from her.

Q. What did you do then?

A. I went right to the boat and I met this fellow.

Q. Who went with you?

A. My wife and her.

Q. Is that the ring? A. Yes.

Q. Now, you met this fellow. Do you know what his name is now? A. Yes, it is Blanco.

Q. Is that the first time you had ever seen him?

A. That is the first time.

Q. Did you ask him for the ring? A. Yes.

Q. Did he give you the ring? A. Yes.

Mr. THACHER.—I object to these questions unless they are made not leading.

The COURT.—Overruled.

Mr. HUTTON.—Q. When you got down there, what did you say to this fellow Blanco?

A. I said I got a letter from my father and it said my sister had a ring, and he had the ring on his finger.

(Testimony of Ralph Vargas.)

Q. Which finger?

A. On this finger, and took it away from it and gave it to me. [86]

Q. Is that ring the same size now as it was then?

A. No.

Q. Who made it smaller?

A. A friend of mine.

Q. Or larger.

A. A friend of mine made it smaller, because on account of my finger it didn't fit good.

Q. Who was that friend?

A. A friend of mine that works in a jewelry store, Mr. Pearl.

Q. Where does he work?

A. He used to work for Granat.

Q. Where is he now?

A. He is working for some jewelry store here near Sutter and Stockton.

Q. When did you have it made smaller?

A. I think, I am not sure, but I think it was a month after, because he was an old friend, and he made it smaller.

Q. How much smaller did he make it?

A. I think it was size 7, and he made it smaller; I am not so sure about the size.

Q. Now, Blanco went up to your house shortly after that, didn't he?

A. That day I invited him to come to the house for dinner, and then he said he couldn't come that day, because he had too much to do, and he came out the next day for dinner, the next night.

(Testimony of Ralph Vargas.)

Q. Did your sister have anything to do with that invitation?

A. She did not have anything to do with it.

Q. You invited him, yourself?

A. Invited him, myself, yes.

Q. And he went out to the house for dinner?

A. Yes.

Q. When he was out at the hour who was there besides you and your wife? Was your sister there?

A. We all were there.

Q. Did your sister have any conversation with him, at all?

A. Not at all; every time that she had conversation my wife was there; my wife never leave my sister out of her sight.

Q. Did he ever invite you out?

A. The night after I gave that dinner he invited me to go out to the Mandarin Cafe.

Q. Did you go?

A. Yes, went over there for a while, maybe for two or three hours—two hours. [87]

Q. Did your sister have anything do do with that?

A. We took my sister along because we could not leave here in the house by herself.

Q. So you took your sister, and the four of you went? A. Yes.

Q. When did you first know that your sister had been assaulted by Blanco?

A. Well, one day Mr. Amaral, a friend of our house, called me over and said he wanted to see me.

(Testimony of Ralph Vargas.)

Q. You cannot testify to what he said, but what time was that, about what date was that?

A. I am not sure about the date, but it was about five thirty.

Q. What day of the month?

A. I don't remember.

Q. Do you remember the time that Blanco was arrested?

A. The day before Blanco was arrested, that was the time that he told me.

Q. That is the first time you knew it?

A. The first time I knew it.

Q. And Amaral told you then?

A. Amaral told me.

Q. You went down to the office of the port steward, did you, a couple of days after that?

A. Yes.

Q. Who did you go with?

A. Somebody told my sister to take her brother, so I went with her, and took Mr. Amaral.

Q. Somebody told your sister? A. Yes.

Q. Do *you who* it was?

A. Somebody in the office, I don't know, somebody in the office told her to take her brother, not to go alone.

Mr. HUTTON.—That is all at this time.

Cross-examination.

Mr. THACHER.—Q. Mr. Vargas, as I understand it, when you went to meet your sister somebody else took your sister home?

(Testimony of Ralph Vargas.)

A. Yes. [88]

Q. Who was that?

A. That was a family from Ecuador.

Q. Do you know what their name was?

A. Yes, Mr. Leon and Mrs. Leon.

Q. Mr. and Mrs. Leon? A. Yes.

Q. You have met them, have you? A. Yes.

Q. That is to say, your sister introduced your family to them, did she? A. Yes.

Q. When you went back to your house, were the Leons still there?

A. No, they called me over and said that they took my sister over there.

The COURT.—Q. The Leons took your sister to their home?

A. Yes.

Mr. THACHER.—Q. That was up at the Leons' home?

A. Yes.

Q. Then you went to the Leons' home, and that was where you met your sister? A. Yes.

Q. Your sister very friendly with Mrs. Leon?

A. Yes.

Q. Have you seen them since, a good deal?

A. Yes.

Q. Your sister always likes to see them, doesn't she? A. Yes.

Q. When you asked her for the ring, I understand that she said that a fellow on the boat had it?

A. Yes.

Q. And that his name was Joe Blanco?

(Testimony of Ralph Vargas.)

A. Yes.

Q. Did she tell you who Joe Blanco was?

A. Yes.

Q. Who did she say he was?

A. He was one in the employement of the boat.

Q. One of the employees on the boat? A. Yes.

Q. Did she say that he had taken it from her?

A. Yes.

Q. You mean that he had stolen it from her?

A. Yes.

Q. That he was a thief? A. Yes.

Q. Weren't you rather excited about his being a thief and stealing your ring?

A. She was not excited, the only thing she told me was that a man over there took it away from her. [89]

Q. Didn't you ask her about how it was that he stole the ring?

A. Well, I asked her, and she said this man took it, she didn't say anything else, she was afraid to tell me.

Q. Never mind that. What did she say when you asked her as to how the man stole the ring?

A. Well, I didn't ask her so much, I said, "Where is the ring"? and she said a man from the boat took it away from her.

Q. You did not ask her anything about how he stole it? A. No.

Q. You were not interested then when you went down there—you hunted up Joe Blanco?

A. Yes, I hunted to meet that fellow.

(Testimony of Ralph Vargas.)

Q. You saw that he was wearing the ring?

A. Yes.

Q. You said, "Give me the ring"?

A. Yes—no, my sister said she came after the ring, and then the fellow said, "I am awfully sorry to keep the ring, I intended to give the ring back."

Q. He gave you the ring?

A. He gave the ring to me.

Q. He was a thief? A. Yes.

Q. You asked him right afterward to dinner?

A. I asked him right afterward.

Q. Did he have an automobile?

A. Yes, two automobiles.

Q. Two automobiles? A. Two automobiles.

Q. Did he use to take you riding in the automobiles?

A. Once he brought it out—I don't know what kind of a machine it was, but he brought a big machine and he said it was his machine, and he said besides that he got another machine.

Q. You used to go riding with him?

A. I just went once.

Q. Who went along riding with you?

A. The three of us went, and the last time we took Mrs. Julian out for a ride, the mother of my wife. [90]

Q. That is to say the first time you went automobile riding with him you and your wife and Ernestina all went riding?

A. My sister, my wife and I the first time.

(Testimony of Ralph Vargas.)

Q. Then the second time you took the three of you and Mrs. Julian along? A. Yes.

Q. That was during the time the boat was in port that first time, when it arrived in November?

A. Yes. The second time was the time we took Mrs. Julian out; we invited him to come to the house at 8 o'clock and he showed up at 10:30 or 11 o'clock that night and he said his work was so hard he couldn't come to the hour earlier.

Q. What I am getting at is that both rides when you and your sister and your wife went out, those were during the stay of the vessel in port when it arrived and brought your sister? A. Yes.

Q. You went out for a two or three hours ride?

A. No; about an hour and a half I think.

Q. Each time? A. Each time.

Q. Besides that after you went down to get your ring from him and he gave you the ring then you invited him to dinner?

A. Yes. He served liquor there and I said, "I thank you, I want you to come out for dinner to my house" because I didn't like to get anything without paying for it.

Q. Then you invited him to dinner and he accepted? A. Yes.

Q. He accepted and came the next day?

A. Yes.

Q. Your sister had not talked to you about him; you just met him and asked him to give the ring back and you invited him to dinner?

A. She just told me because she always used to

(Testimony of Ralph Vargas.)

be in the steamer chair and she always used to ask for fried potatoes, she always used to ask for dinner upstairs. [91]

Q. Your sister told you how she asked for fried potatoes from Blanco?

A. Not to any man that comes along there, but any man that serves at the table.

Q. You invited him to dinner? A. Yes.

Q. Then the next day he invited you to dinner?

A. Yes, he invited me

Q. Then you went up to dinner at the Mandarin Cafe? A. Yes.

Q. You went to the theater afterward?

A. No, we did not go on that trip.

Q. About that time he took you for an automobile ride?

A. Then he said on the next time when he is going to call he is going to call and take us for a ride.

Q. He brought another car and took you for an automobile ride? A. Yes.

Q. All that was while the boat was here the first time?

A. And at the same time he brought the same machine and took all of us for a ride.

Q. And then when he came back the next time he brought a canary and a pair of shoes as presents, did he?

A. I tell you about those pair of shoes; he was wearing those pair of shoes and I said to him, "What kind of shoes are those?" and he said, "I always get them from New York"; he asked for

(Testimony of Ralph Vargas.)

my size, he didn't say anything else, and then he brought a pair of shoes; besides that I had a cushion and I see he fall in love with that cushion and he said, "What a beautiful cushion, I wish I had one so I could have it in my car," so the next time I made it for him, because he asked me for it, when he brought this pair of shoes, I gave the pillow to him.

Q. You gave him a pillow for a pair of shoes?

A. Yes.

Q. He brought your wife a canary bird?

A. He didn't bring a canary for anybody. He said, "I got a canary over here that I had for a long time, I want to give it away to somebody because [92] I have no use for it."

Q. Had your wife asked him for a parrot?

A. My wife asked him for a parrot and he was going to bring it.

Q. Your wife asked the man who stole the ring for a parrot, your wife asked this thief for a parrot?

A. Yes; but she did not know anything against him, she didn't know what kind of a person he was.

Q. Getting back to this ring, what is the name of that man who made this ring smaller?

A. Mr. Pearl.

Q. Where did he work?

A. He worked at Stockton—

Q. And where? A. Sutter.

Q. What company, do you know?

A. I don't know the number of the company; he

(Testimony of Ralph Vargas.)

has just been up there maybe about a year or two years.

Q. Where does he live, do you know?

A. No, I don't know where he lives, he just moved.

Q. Is he a friend of yours?

A. Yes, he is a friend of mine, but he moved lately.

Q. You don't know where he moved to?

A. I know where he moved, but I don't know the number of the house.

Q. Do you know that he worked at Stockton and Sutter? A. Yes.

Q. His name is Pearl?

A. No, that is the man that he worked for.

Q. What is his name? Cuadra.

Q. Are you sure the other name is Pearl?

A. Yes.

Q. That is the man he worked for? A. Yes.

Q. When Blanco came back here the next time he brought the canary bird and shoes, and then you had dinner with him again, didn't you?

A. Yes, I had dinner with him again.

Q. That is you and your family?

A. Yes, he had dinner in my house.

Q. Did you go out automobile riding during that time that the vessel was in port? [93] A. No.

Q. You did not go automobile riding? A. No.

Q. Were they pleasant little dinners that you had? I mean they were not disagreeable?

A. Well, it was disagreeable, because we invited

(Testimony of Ralph Vargas.)

him at a certain hour, and he showed up about 10:30, and he said he was awful busy.

Q. That was the time the boat came in the second time? A. Yes.

Q. But the time the boat came in the first time everything went all right at dinner, didn't it?

A. Yes.

Q. Everybody had a good time? A. Yes.

Q. They seemed to? A. Yes.

Q. Your sister never said that she hated him, or anything of that kind?

A. Well, she said that fellow was bothering her, and my wife told me that, she said that fellow, he wants to marry your sister.

Q. Never mind about what your wife told you. Whatever your wife told you, you invited him to these different meals? A. Yes.

Q. He used to telephone out to the house, did he?

A. Once or twice, I am not sure how many times, he phoned out there.

Q. Did you see anybody else that was on the steamer besides the Leons family? A. No.

Q. You did not meet any others?

A. No, I did not meet any others.

Q. Who is this man Amaral?

A. He was a friend of our house, we had been friends for a long time. He always comes to the house.

Mr. HUTTON.—He is right here, and he is going on the stand.

Mr. THACHER.—You say that it was Mr. Ama-

(Testimony of Ralph Vargas.)

ral who told you about your sister's affair with Joe Blanco?

A. Yes.

Q. Didn't you think it rather strange that your sister should [94] tell Amaral, and not tell your wife or tell you?

A. Well, we always have been so strict in the family, she thought I would throw her out, and she wanted somebody to tell it.

Redirect Examination.

Mr. HUTTON.—Q. You have been so strict in the family?

A. We have been awful strict in the family.

Q. When did you first find out that Blanco was married?

A. When we went to the steward, to Pier 46, he told us that this man was married, and he had three children already, one in the hospital and two in the house.

Q. Who told you—Shenick told you that?

A. Yes.

Q. That was the day after Blanco was down here?

A. Yes.

Q. What else did Shenick tell you?

Mr. THACHER.—I will object to this line of examination as to what Shenick told him as pure hearsay.

Mr. HUTTON.—He said it was down in the office of the company, and he had charge of the operation of the steward's department.

The COURT.—Was Blanco there?

(Testimony of Ralph Vargas.)

A. They called the man there. There was a man in there typewriting, and he called Mr. Shenick.

Q. Was Blanco there with him?

A. Yes, he was there.

Q. He heard what was said? A. Yes.

The COURT.—All right, go ahead.

Mr. HUTTON.—Q. What did Shenick tell you?

A. Shenick said that Blanco was—Blanco said before that he was awfully sorry for what he did to my sister, that he was able to help my sister in anything that it comes to, and he gave us a card, the steward, that fellow gave us a card and told us to come there, or call him up, and "Will you come over to me and we will make some arrangement?"

Q. Who told you that?

A. Shenick said that to me.

Q. Blanco said he was awful sorry for what he did? [95]

A. Blanco said he was awful sorry for what he did.

Q. Did you say to Blanco at that time your sister was going to have a baby? A. Yes.

Q. What did Blanco say to that?

A. Blanco said he was awful sorry, and he wanted to do all that he could, he wanted to talk to my sister, and he wanted to do all he could, pay all the expense it cost, and he said to come down on the 18th day of May, on the next trip.

Q. He told you to come down on the 18th of May?

A. Yes.

Q. Who told you that?

(Testimony of Ralph Vargas.)

A. He said that, and the other man repeated the same words.

Q. What were they going to do on the 18th of May?

A. He said to call him up, because Blanco was going to get there, and then they were going to make some arrangement.

Q. Arrangement for what?

A. Arrangement for all the expenses that she was going to have.

Mr. HUTTON.—That is all.

Recross-examination.

Mr. THACHER.—Q. You say that you had some conversation with this man Shenick?

A. Yes.

Q. Where did you have it?

A. I had it in that office at Pier 46, I think it is 46.

Q. You had that conversation with Shenick at his place of business at Pier 46? A. Yes.

Q. That is the first time you met Shenick?

A. Yes, that is the first time I happened to meet that fellow.

Q. You had not met him any other place?

A. I did not.

Q. You did not meet him up here, or any place else? A. I did not meet him any place.

Q. You went down to see Shenick about what?

A. They told her to take me, they told her to

(Testimony of Ralph Vargas.)

take me to see this fellow, [96] that they were going to make the arrangements over there.

Q. Didn't you go down there to the pier about some hats?

A. No, we did not go for hats. He said at first when I made those hats—

Q. (Interrupting.) Just a minute. What hats did you make? A. I made two hats.

Q. Who did you make the hats for?

A. He told me—

Q. Who told you? A. Blanco.

Q. Blanco told you what?

A. Blanco told me two ladies that worked on the boats, they were good friends of his—

Q. (Interrupting.) Good friends of whose?

A. Of Blanco's, they used to give presents to Blanco, and he wanted to make a present.

Q. Blanco said he wanted to make a present?

A. Yes, to those two ladies.

Q. Now go on.

A. And I brought the two hats.

Q. You brought the two hats? A. Yes.

Q. When was this that you brought the two hats?

A. I think it was on the second trip.

Q. That is to say, the time after your sister arrived in San Francisco, was that when you gave him the two hats? A. Yes, the two hats.

Q. You gave the hats to Blanco? A. Yes.

Q. Whereabouts did you give them to him?

A. Down at the ship.

Q. When the boat came in the second time, that

(Testimony of Ralph Vargas.)

is to say, the first time it was in after your sister arrived, you took the hats down to the Panama Mail dock? A. Yes.

Q. And those two hats were for Blanco?

A. Yes.

Q. Because Blanco said he wanted to have two hats for a present?

A. Yes. I gave them to him where the ladder is.

Q. Blanco was standing down at the foot of the ladder that [97] leads up to the ship? A. Yes.

Q. Then you gave him the two hats? A. Yes.

Q. What happened next?

A. Then he took me to the other side and he told me he ain't got enough money to pay me, and he was going to send me the money.

Q. How much were you going to charge him for the hats? A. $15.

Q. It was two of them? A. Yes.

Q. Then what did you do? Did you let him have the hats? A. I let him have the hats.

Q. What did he do with the hats?

A. Then when he left, we saw a Filipino boy come out with the same boxes, and I followed that boy, because I knew the boxes, I knew the hats, and this Filipino boy went outside, and I watched where these hats were going, and I asked where they were going, and they belonged to Blanco's wife.

Q. Did they say for whom they were?

A. Yes, he said that they were for his wife.

Q. He said they were for Blanco's wife?

A. Yes.

(Testimony of Ralph Vargas.)

Q. This was on the first voyage out? A. Yes.

Q. It was the first time the ship was in after she arrived in here with your sister—that was the first time you heard about Blanco being married?

A. Well, he didn't say that.

Q. You said a minute ago that you were told they were for Blanco's wife. A. Yes.

Q. Had you sold those hats to Blanco?

A. Yes, I sold them, and he was to send me the money from Los Angeles.

Q. You sold them for $15? A. For $15.

Q. And then he was to send you the $15 from Los Angeles? A. Yes.

Q. That was the regular price for the hats?

A. Yes, that was [98] the regular price for the hats.

Q. But afterward you saw them going somewhere else? A. Yes.

Q. Then what?

A. Then I left, I did not say anything, I just went back, and then he kept writing—he wrote a letter from Los Angeles, a postcard, he sent me a postcard, but he didn't send me any money.

Q. What did he say in the postcard?

A. He said he was having a good time, and the "Ecuador" was doing good, and all that sort of thing.

Q. He did not pay you for the hats?

A. No, he did not pay me for the hats until I came to the dock next time.

Q. Until you went down to the dock the next?

(Testimony of Ralph Vargas.)

A. Yes.

Q. She came back, and you went down and collected the money for the hats? A. Yes.

Q. How much did you collect for the hats?

A. $15.

Q. When you went down there to collect for the hats, where did you meet Blanco?

A. There was a young fellow outside—

Q. Outside of where?

A. Outside of the office, it was the only office there, a little office on the other side, and then there was a man over there writing, I think I saw that man right here, too, who is right in this building now, and this man called or phoned in to the port steward, because we asked for him.

Q. You asked for him?

A. We asked for him, and then when we asked for him he called back to call Blanco.

Q. To call Blanco into the office?

A. Into the office.

Q. Did you get your $15?

A. Yes, I got the $15.

Q. You asked Blanco for the $15?

A. Yes, I asked for the $15.

Q. How long did it take you to get the money from Blanco, the $15?

A. Well, he was there, and he said, "You gave the hats [99] away," and I said, "I didn't give you the hats for nothing."

The COURT.—What difference does it make how long it took to get the money?

(Testimony of Ralph Vargas.)

Mr. THACHER.—I don't think it makes any difference. I do not think that conversation down there is in any way binding on the company; he went there to collect some money for hats.

The COURT.—He got the money.

Mr. THACHER.—After you had the discussion about the hats you went off?

A. Yes.

Mr. THACHER.—That is all.

Redirect Examination.

Mr. HUTTON.—Q. What did you go down for, the $15, or on your sister's account?

A. I went over there on my sister's account.

Q. The $15, how did that come up?

A. That came up in the same way I told you, and I told him these cost me $15 for the two hats, and Mr. Amaral told him, "What about the two hats?"

Q. You took your sister and Mr. Amaral with you? A. Yes.

The COURT.—We will take a recess until two o'clock.

(A recess was taken until two o'clock P. M.)

[100]

AFTERNOON SESSION.

TESTIMONY OF MOISES AMARAL, FOR LIBELANT.

MOISES AMARAL, called for the libelant, sworn.

Mr. HUTTON.—Q. Mr. Amaral, you are a resident of San Francisco, are you not?

A. Yes.

Q. And have your business here? A. Yes.

Q. Where?

A. 705 Pacific Building, 821 Market Street.

Q. What is your business?

A. A translater and process server, and collector, sometimes.

Q. Are you a Spanish interpreter, also?

A. Yes.

Q. How many languages do you interpret?

A. Portuguese, Spanish, and French.

Q. How long have you been in that business?

A. I have been in that business now eighteen years.

Q. In San Francisco? A. Yes.

Q. Do you know a man named Jose Blanco, or Jose Blanco Reyes?

A. Yes, I met him about March, 1928.

Q. Where?

A. I think down at Pier 46 in San Francisco.

Q. In anybody's office?

A. Yes, the office of the Panama Mail.

(Testimony of Moises Amaral.)

Q. Whose office? A. Mr. Shenick.

Q. What time in the day did you meet him?

A. About 2:30 in the afternoon.

Q. Anybody go down there with you?

A. Yes.

Q. Who?

A. Miss Vargas and Mr. Ralph Vargas.

Q. How long have you known Mr. Ralph Vargas?

A. I have known Mr. Vargas for about a year.

Q. How long have you known Miss Ernestina Vargas?

A. About nine or ten months, maybe eleven months.

Q. You got acquainted with her just after she arrived here? A. Yes. [101]

Q. When you went down and went into the office of Mr. Shenick, who was there at first?

A. First there was a clerk, a young gentleman that I seen around here yesterday, and to-day, and then I inquired for Mr. Shenick, and he told me that he would call him, and he did, and Mr. Shenick came, and that is how I met Mr. Shenick for the first time.

Q. Did you have any conversation with Mr. Shenick at that time? A. Yes.

Q. What was the result of it?

A. I had no conversation with Mr. Shenick, Mr. Shenick had the conversation with me.

Q. What did he say?

Mr. THACHER.—Just a minute, I object to this

(Testimony of Moises Amaral.)

line of examination. It seems to me there is only one issue here, that is the issue of the criminal assault on board this ship.

Mr. HUTTON.—Mr. Shenick, at that time, according to the testimony, was an officer of the company, an agent, and in charge of the steward's department.

Mr. THACHER.—A port steward.

Mr. HUTTON.—It seems to me that would be representing the company at that time.

The COURT.—Q. Was Blanco present?

A. Yes.

Q. Hear everything that was said? A. Yes.

Mr. THACHER.—But the prosecution is not against Blanco, but against the company.

The COURT.—I understand. The objection is overruled.

Mr. HUTTON.—Q. What did Mr. Shenick say?

A. Mr. Shenick, addressing me, says, "I think I can understand you, and that you can understand me better than addressing these other people and talking to them; you understand the English language?" and I said, "Yes." He said, "This lady," who was present, "Miss Vargas, and her brother have tried to put this young man in jail." [102]

Q. Was Blanco there then?

A. Yes. First Shenick came, and then Joe Blanco came. When this conversation took place Blanco was there.

Q. How did they get him there?

(Testimony of Moises Amaral.)

A. Mr. Shenick told me that Blanco was coming. Shenick came first and he said, "My name is Mr. Shenick, and I am port steward of the Panama Mail," and I said, "My name is Amaral, and I came with these people because there is an understanding about these people coming here to see Joe Blanco," and he said, "He will be here in a minute," and then Blanco walked in.

Q. Then Blanco came in?

A. And Mr. Shenick said, "Sit down, Mr. Amaral. Joe Blanco is here, he is very sorry for what happened to this young girl, and he wants to do the right thing by her." I says, "Mr. Shenick, what is the best thing he wants to do?" And he says, "That boy tells me that he is willing to pay for the hospital expenses and take care of her, but he is not able to give her anything right now," but he wanted her to come up later on. He said, "Joe, is that right?" and he said "Yes." He said, "Now, are you willing to take care of this girl and give her something?" And he said "Yes." He said, addressing Joe, "You know that you can't work for this company unless you take good care of this girl and the child that is coming that is yours." And he said, "Yes." He said, "You are willing to do that?" And he said, "Yes, I will." "Now," he said, "Mr. Amaral, I want you to be here with these people, that is, with Miss Vargas and her brother, on the 18th of May." He said, "Joe, the steamer will be here on the 18th," and he said, "Yes." He goes and looks at a paper, the

(Testimony of Moises Amaral.)

paper was right in front of him, and he said, "The boat will be here on the 18th [103] Mr. Amaral, and I want you to come down here, but first you call me over the telephone," and he goes and he looks for a card, and he gives me a card, and said, "You call me over the telephone, and then I will tell you to bring these people down, and when you are down here with me I will see that Joe gives some money to her, and from then on he is going to take care of this young lady, and later on will take care of the child." Then Mr. Shenick told me, he said, "You know, Mr. Amaral, these things are known to me, this is not the first time that things of this kind happen, and a man gets stuck on a girl. I am very sorry."

Mr. THACHER.—I object to that.

Mr. HUTTON.—Never mind about that.

Q. But, at any rate, he spoke as you testified?

A. Yes. Then I asked Joe, himself—

The COURT.—Joe who?

A. Joe Blanco. I says, "Joe Blanco, do you admit that this child that is coming is yours, and that you should provide for her," and he said, "Yes, I am sorry for what happened, and I will take care of her." Then next I said, "You owe $15 to this young man for two hats, have you got the money, or have you paid him?" And he said, "No, but I have the money," and he put his hand in his pocket, and from his pants pocket he takes a roll of bills, and he wanted to say that it was $12.50, and Mr. Shenick says, "Now, Joe, what is

(Testimony of Moises Amaral.)

the difference, $12.50 or $15, that makes no difference, give them the $15." And Joe gave him the $15. Then Joe left, he went away, and we all left.

Mr. HUTTON.—Q. How did you come to go down there in the first instance?

A. I went down there at your advice. [104]

Q. When did I give you that advice?

A. I will tell you. I brought this girl over to this building. I was in the company of her and her brother, and it was about March 12 or 13, between the 12th and 14th, and then on the 15th of March, 1928, this young lady came over to see me with her brother, and they told me that Mr. Krull, the Commissioner, had advised them to go down to the office—

Mr. THACHER.—Just a minute, I object to this.

Mr. HUTTON.—Q. At any rate, did you go down on her account, or on account of the $15?

A. I went on her account; she told me that the man, Joe Blanco—

Mr. THACHER.—Just confine yourself to answering the question.

Mr. HUTTON.—Q. You went down on her account?

A. Yes, on her account.

Q. Did she ever make any complaint to you, without stating what she said—did she make any complaint to you? A. Yes.

Q. When?

A. This girl came to me—when she first came,

(Testimony of Moises Amaral.)

and when I brought her to this building, she came and told me that she had a lot of trouble, and that she wanted to get away from here, if I could get a position for her; I insisted on knowing what the position was that she wanted, and the reason for leaving her brother's house, and she told me that she was ashamed to tell me, and I said, "Now, you tell me, has your brother treated you"—

Mr. THACHER.—Just a minute.

Mr. HUTTON.—Q. At any rate, you went and told her brother, didn't you?

A. Yes, I went and told her brother what she told me.

Q. Did she tell you on that occasion that she was in a delicate condition? A. Yes. [105]

Q. That is the complaint? A. Yes.

Q. Did you make any memorandum at that time of what occurred down in Schenick's office?

A. Yes, I have the memorandum hight here, the dates, and everything.

Mr. HUTTON.—That is all.

Cross-examination.

Mr. THACHER.—Q. You say you are an interpreter?

A. Yes, I am.

Q. What else do you do?

A. I am a translator of languages, I am also a process server.

Q. A process server?

(Testimony of Moises Amaral.)

A. A process server for many attorneys here in the city.

Q. So you are frequently in touch with attorneys? A. Yes, every day.

Q. You are a kind of an attorney, yourself, are you?

A. I am not an attorney, but I have studied law for fifteen years.

Q. So you naturally give advice to people that come to you for advice?

A. I will tell you, if I see a girl is in trouble I am going to see that something is straightened out, that is all.

Q. You give advice right away, don't you?

A. I do not give advice to anybody unless a person asks for it.

Q. You don't give advice unless a person asks for it? A. No.

Q. You are like any lawyer?

A. And I am able to do so.

Q. You know the law?

A. Yes, I have read law for fifteen years, I don't know much.

Q. But you know fifteen years of law?

A. I have read fifteen years law, every day.

Q. And in this particular case, as soon as Miss Vargas came to you you knew just what the law was?

A. No, I did not know. [106] I did not know where to take her, and I brought her over to *to*

(Testimony of Moises Amaral.)

this building, and I turned her over to the United States authorities.

Q. How did you come to take her to the United States authorities, rather than the state authorities? How did you happen to know that?

A. When a man makes an assault upon a girl on the sea, I ought to know that the United States authorities take charge of those things.

Q. How soon after she told you did you take her down here?

A. I took her about three or four days after. I reported the matter to the brother, first, and the brother told me to do that.

Q. You questioned her about the case, and then you took her down here?

A. No. I told the brother not to put the girl out of the house.

Q. Then you took her down here?

A. I called on the brother first, and told him all about it, and told him not to do any wrong to the girl, not to put her aside from the house to take good care of her.

Q. Just confine yourself to the questions.

A. Yes.

Q. I am asking you how did you happen to bring her down here?

A. The brother asked me to bring her down.

Q. The brother asked you to look after the legal end of her trouble?

A. Yes, the brother told me to take her to the

(Testimony of Moises Amaral.)

United States authorities, that she wanted to make a complaint.

Q. That was after you told him about the United States authorities?

A. Yes. I told him the United States authorities would take care of the case.

Q. You gave him the advice about the United States authorities? A. Yes, absolutely.

Q. And then he told you to look after the girl's case? [107]

A. No, not at all. I am not a doctor. I am just a man that reads law.

Q. You are a lawyer?

A. I am not a lawyer, I am a man that has read the law for fifteen years.

Q. You are a pretty good lawyer, you know the law? A. I am a pretty good lawyer, yes.

Q. So that when you were asked for legal advice you could give legal advice, you have read law for fifteen years, and you know the law?

A. I don't know much about the law, I told you, but I knew enough to give the brother advice of the place where he had to go and make a report of the case.

Q. Then after you brought her down here you turned her over to the United States authorities?

A. Yes.

Q. And you told Mr. Hatfield that you hoped to send this man up?

A. No, I did not have any conversation with Mr. Hatfield. I have not seen Mr. Hatfield for

(Testimony of Moises Amaral.)

about a year. The conversation that I had with Mr. Hatfield was about thirteen or fourteen years ago, when I was introduced to him.

Q. Who did you talk to down there?

A. I talked to some gentleman, I don't know what his name is, at all.

Q. You told him that you were bringing this girl down here to prefer charges for criminal assault?

A. No, I told him that the brother was there, there is the girl, and there is her brother, and the brother has a story to tell you.

Q. You didn't tell him what it was all about?

A. Not at all.

Q. When did you see the girl next?

A. Immediately after. Then the girl was brought back again.

Q. By you?

A. Upon their advice, and they had interpreters, and everything.

Q. Where did you take her then?

A. I took her over here to this building.

Q. You took her back to Mr. Krull? [108]

A. Not to Mr. Krull, to these people, to a representative of the Department of Justice.

Q. Then you left her? A. Yes, exactly.

Q. And you knew over here that she was going to be taken before the United States Commissioner?

A. Not at all. The United States authorities told me to step out from the case entirely, that

(Testimony of Moises Amaral.)

they had interpreters that would talk with this girl, and that they would make an examination in private, and that they did not need my services, at all.

Q. And you saw her immediately after she left the building? A. Immediately when?

Q. After she left the building, coming out.

A. On the first day that she came out.

Q. And on the second day she came out?

A. Yes.

Q. Where did you join her?

A. I was right outside in the corridor of the building.

Q. You went outside the corridor of the United States Commissioner's office?

A. No, not the Commissioner, the Department of Justice, which was on the second or third floor, I can't remember where it is now.

Q. Then, after that, you took her down to your office? A. No.

Q. What did you do?

A. The United States authorities took care of her, and I did not have any more to do with her, I did not take her to my office.

Q. When did you see her next on that day?

A. After she was here the second time?

Q. Yes.

A. I didn't see her any more, she went to her home.

Q. On the next day, when did you see her?

A. The next day I did not see her at all. When

(Testimony of Moises Amaral.)

she appeared before Commissioner Krull I was not in the building, at all.

Q. When did you see her after she appeared before Commissioner [109] Krull?

A. I saw her about the 16th of March, 1928.

Q. How soon was that after you had taken her up?

A. I think it was one day after she appeared before Commissioner Krull, according to my record.

Q. One day afterwards? A. Yes.

Q. Where did you take her then?

A. I took her down to the Panama Mail.

Q. Directly down to the Panama Mail?

A. First to the office, where they have the office in San Francisco, not the pier.

Q. Down at the foot of Pine Street?

A. Yes. I wanted to know where I could locate Mr. Shenick.

Q. You had no card, or anything of that kind?

A. I had that card.

Q. What did the card say?

A. The card said the Panama Mail, Mr. Shenick, port steward, telephone so and so, and all that.

Q. Didn't it give the pier? Didn't it state that his only address was on the pier?

A. No, they did not tell me that at the time. This gentleman said to call at the office of the Panama Mail.

Q. Was this the card that you had?

A. Yes, this is the card that the girl had.

(Testimony of Moises Amaral.)

Q. Doesn't that card say that his office was at Pier 46?

A. I did not look for Mr. Shenick, I looked for the office of the Panama Mail Steamship Company, where they wanted to see her.

Q. Then you went down to the dock?

A. Then I went to the dock, because they told me that the man that was handling this case was Mr. Shenick, and that he—

Q. (Interrupting.) Who told you that?

A. At the office of the Panama Mail. [110]

Q. Who told you? A. The manager's office.

Q. You went to the general manager or assistant general manager?

A. Yes, I asked for the assistant manager, there is an information bureau on the second floor, and they told me Mr. Shenick was down at 46.

Q. You went to the second floor of the building, where the Panama Mail is?

A. Yes, I think it is the second floor.

Q. Don't you know whether it is the first floor or the second floor? Did you go upstairs to the second floor, or did you not?

A. I think it was on the second floor that I went to; there is an information bureau, there is a girl that gives you information, and Mr. Shenick was called over the telephone and it was said Mr. Shenick was in.

Q. You asked this girl as to where Mr. Shenick was? A. Yes.

Q. Then you went to the dock?

(Testimony of Moises Amaral.)

A. I said, "There is a girl here that has some kind of a case, you know, where a man made an assault upon her."

Q. Who did you say that to? A. To a woman.

Q. What woman?

A. The woman that received the information for the Panama Mail.

Q. Just a minute, tell me where that is, at the Panama Mail office; remember you are under oath.

A. I am under oath, I am in this court right now.

Q. You are under oath right now; just indicate where you went. A. I went from Market Street.

Q. I am asking you at the Panama Mail office.

A. What do you want?

Q. Indicate where this was that you saw this girl. A. I will tell you.

The COURT.—Do you want to draw a diagram?

A. I don't know where the Panama Mail is exactly now. [111]

Mr. THACHER.—Q. You don't know where you went?

A. I knew where I went at that time, I knew where I was going.

Q. What time was that? A. March 16.

Q. What time of day?

A. 1928, in the afternoon, about two o'clock—I have got the hour right here, on March 16, 1928, at the hour of two o'clock, I was at the office of the Panama Mail, and at 2:30 I was at the office of the Panama Mail at Pier 46.

(Testimony of Moises Amaral.)

Q. At Pier 46?

A. Yes, at Pier 46. That is what I wrote down. It may be some other pier, but what I wrote at that time, that is what is there, Pier 46. I will show it to you, Pier 46, 2:30, March 16.

Q. You made charges, did you, on this case?

A. What do you mean by charges?

Q. Well, you charged so much money for this case?

A. I did not charge; I am going to charge for the carfare that I paid.

Mr. HUTTON.—That is another matter.

A. That is all right, I am going to make charges to them, I paid 10 cents for carfare, and I paid 15 cents for carfare, and I have not been paid to date. I paid it out of my pocket, and I have not collected it.

Q. Then you went down there and spent how much time? How much time did you spend on the case that afternoon?

A. I spent about two or three hours down there.

Q. Two or three hours down there?

A. Going down and coming back. It takes a long time to go to Pier 46.

Q. It was down there that you had this talk with Mr. Shenick?

A. Yes, I had the conversation with Mr. Shenick myself—that is, he had the conversation with me.

Q. You went down, as I take it, by the street-car

(Testimony of Moises Amaral.)

to Pier 46, and then there was carfare to Pine Street? A. Yes, *I to* Pine Street. [112]

Q. You made a charge for one and a half hours?

A. I did not make any charge, at all; I put down the time that I used, so I could collect it.

Q. So you could collect for your time?

A. Yes, I am going to collect for my time if I can.

Q. As I understand it, you are going to make charge for your time that you are here? A. Yes.

Q. You are going to make a charge for any time that you spend on this case? A. Yes.

Q. That is your business, to give advice with charges? A. Yes.

Mr. THACHER.—That is all.

Redirect Examination.

Mr. HUTTON.—Q. Calling your attention to this card that Mr. Thacher showed you, Libelant's Exhibit 1, whom did you get that from?

A. I am not sure, two cards I had; one card was given to the girl, and one card was given to me by Mr. Shenick. Mr. Shenick said, "Here is my card."

Q. At any rate, did the girl give you a card?

A. Oh, yes, she gave me one. I had two. One was given to me by her, so I could go to the office of the Panama Mail, and the other card was given me by Mr. Shenick so I would call him over the telephone on the 18th of May, 1928, and take the girl down there.

Mr. HUTTON.—I think that is all.

TESTIMONY OF MRS. MILDRED VARGAS, FOR LIBELANT.

Mrs. MILDRED VARGAS, called for the libelant, sworn.

Mr. HUTTON.—Q. You are the wife of Ralph Vargas, that was on the stand, aren't you?

A. Yes. [113]

Q. You are the sister-in-law of Miss Ernestina Vargas, are you not? A. Yes.

Q. How long have you been married?

A. I have been married a year and two months on the 30th of this month.

Q. You work, don't you? A. Yes.

Q. At the Emporium? A. At the Emporium.

Q. Where were you born?

A. In Columbia, South America.

Q. How long have you lived in San Francisco?

A. It is about seven years.

Q. Your husband works, does he? A. Yes.

Q. Where do you live?

A. We live at 1204 Fourth Avenue.

Q. How long have you lived there?

A. It will be about—I think since March—I believe it was in March we moved there.

Q. Do you know a man named Jose Blanco, or Jose Blanco Reyes? A. Yes.

Q. What name do you know him under?

A. Jose Blanco.

Q. Did you ever hear of the name Reyes?

(Testimony of Mrs. Mildred Vargas.)

A. Well, I did not hear about the Reyes until he sent a card to us with his name on.

Q. When was the first time you ever saw him?

A. The day my sister-in-law arrived and we went back to the steamer.

Q. Had you been down to the steamer before that morning? A. No, that was the first time.

Q. How did your sister-in-law get out to the house, out to where you live? Did you meet her?

A. Yes, I met her at the door of the dock, I met her that morning.

Q. You did not go aboard the steamer, though?

A. No.

Q. Did you go out to your house, or to somebody else's house, with your sister-in-law?

A. To my house. [114]

Q. Where was your husband at that time?

A. He was trying to get some papers, a permit, to go on the dock.

Q. When your husband came home, what did you do then?

A. Then she gave me some little things that she had from home.

Q. When you say "she," do you mean your sister-in-law? A. My sister-in-law.

Q. Then what did you do?

A. Then he read in a letter that there was a ring that his father was sending to him, so we went to the ship.

Q. What ship did you go to?

A. Then we went back to the "Ecuador."

(Testimony of Mrs. Mildred Vargas.)

Q. Did you see Blanco then? A. Yes.

Q. Is that the first time you ever saw him?

A. That was the first time.

Q. What happened then?

A. He took us in the room and then he gave the ring to him and he asked us to go out to supper that evening.

Q. Who asked for the ring? Did anybody ask for the ring?

Q. I can't remember who asked for the ring.

Q. At any rate, you got a ring from him?

A. Yes.

Q. Who got the ring, did you or your husband get it? A. My husband.

Q. Where did Blanco take the ring from?

A. I am not sure, but I believe he had it on his finger.

Q. At any rate, your husband got the ring?

A. Yes.

Q. Now, what was that about going out to dinner? Who asked that?

A. Blanco asked us if we would go out to supper with him Saturday night, the following night, so I said no, and my husband said to him, "You come out to the house to supper."

Q. He went out to supper? A. Yes.

Q. How many times did Blanco call at your house—more than once?

A. Yes, more than once.

Q. Did your sister-in-law have anything at all to

(Testimony of Mrs. Mildred Vargas.)

do with that invitation out to supper? A. No. [115]

Q. How many times did Blanco call at your house, all together? All together, in the whole time up to March, how many times did he call there?

A. It must have been about three or four times, I believe, I can't remember exactly.

Q. Did you go out to supper with him?

A. Yes.

Q. Did you take him out to supper?

A. No, we never took him out.

Q. I mean, did your husband ever take him out?

A. No.

Q. Did you give him dinner in your house?

A. Yes.

Q. When was the first time that you ever knew that your sister-in-law was going to have a baby?

A. At the time I was taking her to the doctor because she said she did not feel well, and then when she came out from the doctor she was crying, and I asked her why, and she told me what had happened.

Q. You took her to a doctor? A. Yes.

Q. What doctor did you take her to?

A. Dr. Aldana.

Q. He has got an office in San Francisco?

A. Yes, he has an office, I think it is at Jackson and Van Ness.

Q. Had you known that doctor?

(Testimony of Mrs. Mildred Vargas.)

A. Well, I did not know him very well, but he was my mother's doctor.

Q. Your mother lives in San Francisco, also?

A. Yes.

Q. You took her to the doctor, and then you knew for the first time she was in trouble?

A. Yes.

Q. Is that the first intimation you ever had of any trouble which she had gotten into, or was in?

A. That was the first time.

Q. Do you know whether Blanco arrived in San Francisco shortly after that?

A. He did, a few days after.

Q. Did you see him?

A. I think in about two or three days after he was in I went down to see him. [116]

Q. Where did you go to?

A. I went to the dock, I don't remember the number of the dock, but it was the same dock that she had arrived at the first time.

Q. You went down to the dock? A. Yes.

Q. Did you go to the port steward's office?

A. Yes.

Q. Did you send for Blanco?

A. Yes, someone sent after him.

Q. Did he come up there? A. Yes.

Q. Did you have any conversation with him?

A. Yes.

Q. Did you tell him about the trouble your sister-in-law was in? A. Yes.

Q. What did you say to him?

(Testimony of Mrs. Mildred Vargas.)

A. Well, I told him that my sister-in-law was telling me what had happened to her, and wanted to know what he would do about it, because I was afraid my husband would find out about it, so then he said to me that he did not know what to do about it, and asked if I knew a doctor, or something that would help her, I didn't know anybody, I was afraid it might be dangerous, so he told me that in Panama he was looking for somebody, that he was intending to get a medicine for her, and he was unable to find that party, so he said he did not have any money to give her right away, so she could have something, but he was able to get it, and he said the following night he was going to come up to the house and talk to me and see what he could do about it, and so then I asked him if there was any way that he would marry her, and he said he could not marry her right away, because he had another engagement, so then I asked him "Are you married?" And he said, "Yes," and that is the first time I found out he was married.

Q. Is that the first time you knew that he was married? A. Yes, that is the first time. [117]

Q. You asked him on that occasion? A. Yes.

Q. When he suggested getting a doctor, for what purpose did he say that was?

A. To try and get rid of the child.

Q. Did he make that suggestion to you?

A. Yes.

Q. He said he was going to furnish the money?

A. Yes.

(Testimony of Mrs. Mildred Vargas.)

Q. Just tell the Court, in your own way, all the conversation you had with him at that time, starting in from the beginning, what you said to him, and what he said to you, without my asking you any question.

A. When he came to the house first he asked me how I was, and everything like that, and I said the only reason I had come down was I found out what happened to my sister-in-law, she is in a bad condition, and then he said, "Did you take her to a doctor?" And I said, "Yes, I took her to a doctor," and he said, "Can he do anything for her?" and I said, "I don't think so, because we did not go for that reason." First, he said, "Don't you know of any doctor that could possibly do anything for, to get rid of it?" And I said, "Well, I think it would be too dangerous," and he said, "Well, I don't know what to do, I have been down at Panama trying to find somebody that they said would give me a medicine for her that she could take for that, and I was not able to find him," and he said, "I suppose we will need money for that, I have not any money right now, but I will be able to find some," and I said, "Well, what about marrying, can't you marry?" I was afraid my husband might find out, and he might do something rash, that was all I was afraid of. He said, "I can't marry her now because I have a very important engagement." I said, "What can it be, are you married?" And he said, "Yes, I am married, and I have some children."

(Testimony of Mrs. Mildred Vargas.)

Q. About this Panama matter, what did he say about that? [118] Just tell the Court everything that he said about that.

A. Well, he said they had given him the address of a party, or something like that, I don't remember exactly—he said I think he got the address of a party that could give him some medicine for her.

Q. Why was he going to do that?

A. I don't know, I guess he suspected there might be something wrong with her, he did not say.

Q. Did he say at that time that he had had intercourse with your sister-in-law?

A. Well, he did not say it, but he almost admitted it when I told him the condition she was in—when I told him the condition she was in then he almost admitted it, he did not come right out and tell me anything about it.

Q. You made the arrangements with the St. Elizabeth Home, did you not, for your sister?

A. Yes.

Q. You have practically handled her affairs from that time on, haven't you? A. Yes.

Q. Who made the arrangements for sending her to Stockton?

A. To Santa Rosa, I sent her to Santa Rosa.

Q. Did you know some one up there?

A. Yes, we have some friends there that have a ranch.

Q. Who made the arrangements by which the child is in the care of some woman here now?

A. I did.

(Testimony of Mrs. Mildred Vargas.)

Q. Did you visit her while she was in the St. Elizabeth Home?

A. Yes, I was out there nearly every Sunday—I went out to see her nearly every Sunday.

Q. Visited her? A. Yes.

Q. Did you go to see her the Sunday after the child was born?

A. Yes, I was there the Sunday after the child was born.

Q. You have seen the child, haven't you?

A. Yes, I have. [119]

Q. What was her condition the Sunday after the child was born?

A. Well, she was in a very weak condition, and when I was up there they told me she had a very hard time, and when I would bring her home to be very careful of her because she was very weak.

Q. How many times have you seen the child since? A. About three or four times.

Q. You have seen Blanco several times, haven't you? A. Yes.

Q. Now, is there any resemblance between the child, the features of the child, and Blanco?

A. I think there is.

Q. In what respect?

A. Well, it has got the same shaped face, and the eyes are about the same, I think it looks very much like him.

Q. He looks very much like him? A. Yes.

Q. Did Blanco ever at any time deny you that he was the parent of that child?

(Testimony of Mrs. Mildred Vargas.)

A. No, he never did.

Q. On the contrary, he said he wanted to pay the expenses? A. Yes.

Q. How does your sister-in-law conduct herself around the house, is she quiet, or otherwise?

A. She is a very quiet girl.

Q. Well-behaved? A. Yes.

Mr. HUTTON.—I think that is all.

Cross-examination.

Mr. THACHER.—Q. Mrs. Vargas, I understand that the first time that you learned about your sister-in-law was when you went to the doctor.

A. Yes.

Q. That was along in March? A. Yes.

Q. Were you up here that time when your sister-in-law came up here to the United States Attorney's office? A. No. [120]

Q. But you know about when she went?

A. I think it was in March.

Q. About how long before that time that they went to the United States Attorney's office was it that you saw Blanco on the ship?

A. I believe it was either the day before or two days before that.

Q. In other words, you told your husband, did you, as to the condition of your sister-in-law?

A. No, I did not.

Q. He learned of it in another way? A. Yes.

Q. Did you turn the case over to Mr. Amaral? Who is Mr. Amaral?

(Testimony of Mrs. Mildred Vargas.)

A. Mr. Amaral, he is a friend of the family, and I believe he handles some kind of cases.

Q. And you turned this case over to him, your *brother* did? A. No, I don't think so.

Q. To get back to the time that the ship came in, Mrs. Vargas, as I understand it when you met your sister-in-law when the steamer first came in, you did not meet Joe Blanco at that particular time?

A. No.

Q. It was after you went home and the letter was read which came from your husband's family and he read about the ring, that he talked about the ring? A. Yes.

Q. Then you drove down from your house to the pier, did you? A. I did.

Q. And saw Blanco at that time? A. Yes.

Q. At the time when your husband read the letter from his family telling about the ring, were you present? A. Yes, I was there.

Q. Then what did your sister say about the ring?

A. I think she said that some man down on the steamer had it, the steward, or somebody, she said.

Q. Did she say anything about how he happened to have it? A. No. [121]

Q. She just said that he had it? A. Yes.

Q. That was Blanco? A. Yes.

Q. Then what did your husband say?

A. He said, "We will go right down and get it."

Q. Then you drove down, and you hunted up Blanco, and you asked him for the ring?

A. I did not.

(Testimony of Mrs. Mildred Vargas.)

Q. I mean your husband did? A. Yes.

Q. But you were with your husband? A. Yes.

Q. And he pulled it off his finger, Blanco did, and gave it to your husband?

A. I am not sure whether he had it in his pocket or on his finger, just where he pulled it out from.

Q. But, at any rate, as soon as he asked for the ring he gave it right away to your brother?

A. No, I think he took us to the lunch-room, first, and then gave him the ring.

Q. Then did he and your husband have any kind of a talk—were they talking? Were you all talking together about the trip up, or anything of that kind?

A. I just asked him how she was, whether she was very sick on the steamer, and he said she was sick nearly all the way, and that is about all we talked; we did not stay very long.

Q. Then you drove off, and the next day, as I understand it he came up to your house and had dinner? A. Yes.

Q. And everything was quite agreeable?

A. Yes.

Q. Was it the next day that you and your family went out on an automobile ride with him?

A. I believe it was the next day he took us in his machine to the Mandarin for dinner.

Q. But you had some automobile ride besides that, didn't you? A. No, not that I remember.

Q. After that you went to the theatre, and everything was agreeable, was it not? A. Yes.

(Testimony of Mrs. Mildred Vargas.)

Q. I mean there was no unpleasantness?

A. No. [122]

Q. Your sister-in-law did not indicate any dislike to him? A. She never said a word.

Q. The next time when he came back to this port, that is, along in December, was when he brought back certain presents to your family, was it?

A. I think it was around December or January, around there.

Q. Tell me, was he calling up a good deal at that time? A. No.

Q. Then it was the second time the ship was here you had him out to dinner again?

A. Yes, I think I asked him, I invited him to come up to dinner, and I believe he got there very late.

Q. Did you have dinner with him after that, I mean your family? A. No.

Q. Then it was after that that you learned of your sister-in-law's condition, was it?

A. Yes, after that.

Q. And you went down to the dock? A. Yes.

Q. Were you ever at the dock again?

A. No, never again.

Q. Just that one time? A. Yes.

Q. At that time he seemed to know the condition that she was in? A. Yes.

Q. He showed every indication, when you talked to him about your sister-in-law's condition, that he knew about the condition that she was in?

A. Well, he did not ask me about it, or anything

(Testimony of Mrs. Mildred Vargas.)

like that, but just the way he talked to me I guess he knew what I was talking about. I did not know him very well, and I was afraid of saying anything like that.

Q. Let me ask you, Mrs. Vargas, were there some friends of your family, Leons, or some such name, that came up on the steamer "Ecuador" at the same time your sister-in-law came?

A. They were not friends of our family; we met them after they arrived here. [123]

Q. Your sister-in-law asked you to call on them, or something of that kind?

A. No, they called us up and then we went out to see them.

Q. Your sister-in-law is very friendly with them?

A. They traveled together, they were acquainted there on the boat.

Q. Were there any other of the fellow passengers of your sister-in-law that you saw anything of afterward? A. No.

Q. As I understand it, Blanco is part Filipino, or something of that kind? A. I believe so.

Q. Part Filipino and part Spanish?

A. I believe so.

Q. What makes you think the resemblance between him and the child is close, I mean has it the Oriental look, or what is it?

A. Well, I don't know, but as I have seen Blanco several times and I have seen the child, I think the only resemblance the child has is to him.

Q. The little child is about a month or so old?

(Testimony of Mrs. Mildred Vargas.)

A. Yes, about a month old; it will be two months on the 19th.

Mr. THACHER.—That is all.

The COURT.—Q. You say that your sister-in-law told you about her trouble when she came from the doctor? A. Yes.

Q. What did she say to you?

A. Well, when she came out of the doctor's office she was crying, and then I asked her what was the matter, and at first she kind of hesitated, did not want to tell me, and then she said she was in a family way, and then I asked her what happened, how it happened, and then she started and told the story of how the steward on board the steamer had assaulted her in the morning about two days after she was on board.

Q. Is that all she said?

A. That was all she said. [124]

Redirect Examination.

Mr. HUTTON.—Q. Did Blanco say at that time why he had gone to a doctor in Panama to try to get something, and failed to find the doctor?

A. He said he was trying to get some medicine for her.

Q. Why was he trying to get it, did he say why?

A. No, but as much as I could understand, it was to get rid of the child. That is what I understand.

Q. But I mean how did he know the girl was going to have a baby? A. I don't know.

Q. Didn't he say this—I do not want to make it

(Testimony of Mrs. Mildred Vargas.)

leading—that he was expecting or was afraid that something was going to happen—did he use that language? A. Yes.

Q. He did say that? A. Yes.

Q. How is it you did not remember that?

A. I kind of forgot the things that he said.

Q. Well, now, he did say to you then that he expected or was afraid something was going to happen, and then when he was down in Panama he tried to get some medicine, didn't he? A. Yes.

Q. You talked in Spanish?

A. Yes, I talked Spanish to him.

Q. That is your native language? A. Yes.

The COURT.—Did you talk Spanish to Blanco?

A. Yes.

TESTIMONY OF EMMA JULIAN, FOR LIBELANT.

EMMA JULIAN, called for the libelant, sworn and examined through the Interpreter, testified as follows:

Mr. HUTTON.—Q. Do you speak English, Mrs. Julian?

A. No. [125]

Q. Where were you born? A. Colombia.

Q. The Republic of Colombia?

A. The Republic of Colombia, yes.

Q. How long have you lived in San Francisco?

A. On the 25th of September it will be seven years.

The COURT.—Don't you speak English at all?

(Testimony of Emma Julian.)

A. No.

Q. You must understand me, don't you?

A. I have not been able to learn it because it has been extremely difficult.

Q. Do you speak Spanish at home all the time?

A. All the time Spanish.

Mr. HUTTON.—Q. Mrs. Vargas is your daughter, is she not?

A. Mildred, yes.

Q. Where do you live now?

A. 1149 Divisadero Street.

Q. How long have you lived there?

A. Since the last of May this year.

Q. Where did you live before that?

A. 1061 Scott Street.

Q. Do you know a man named Jose Blanco, or Jose Blanco Reyes?

A. I don't know him as Reyes, I know him as Jose Blanco.

Q. What does he do, to identify the fellow?

A. He is employed aboard a ship, that is all I know.

Q. Did you ever meet him at the house of your son-in-law? A. Yes.

Q. After he went away on a trip, was that the time you moved, or, in other words, did you move while he was away on a sea voyage, while the steamer was away on a sea voyage? A. Yes.

Q. That is, you moved from Scott Street to Divisadero Street while he was away? A. Yes.

Q. Did he, after his return, on or about the 20th

(Testimony of Emma Julian.)

or 21st of May, 1928, call at your house on Divisadero Street? A. Yes, one afternoon.

Q. Did you invite him there, or did he call, himself? [126] A. He came of his own accord.

Q. About what time was it that he got there?

A. Approximately it was half-past five or six o'clock in the afternoon, something like that.

Mr. THACHER.—Your Honor, I would like to make a motion that all of this testimony go out in regard to when he made a call, that was after the suit was brought. As a matter of fact, it was to get information regarding the whole matter that Blanco, I think, called on her. It has nothing to do with any claim against the Panama Mail Company.

Mr. HUTTON.—It does not make any difference whether it was before or afterwards. I do not see that the time of the statement cuts any figure.

The COURT.—The objection is overruled.

Mr. HUTTON.—Q. When he called on you, did you talk to him?

A. When he arrived he said he wanted to talk to me.

Q. What room were you in at that time?

A. The living-room, the parlor—he called at the door and I opened it.

Q. Did he come into the parlor?

A. Yes, he came in and sat himself in my parlor.

Q. Did you go in with him?

A. Naturally, as I had opened the door and told

(Testimony of Emma Julian.)

him to come in ahead of me, I returned to hear what he had to say.

Q. Was anybody in the room but you and him at that time? A. There was no one.

Q. Was there anybody in the house with you but you and him?

A. I don't think there was anyone there, in the rear part of the house.

Mr. HUTTON.—I am going to say that in Blanco's deposition he says he went to this lady's house at that time and talked to her, and the question is what took place. [127]

Q. Now, had Blanco been carrying any mail from you for Colombia, or any letters for you from Colombia?

A. When he left on the vessel he took a letter to a sister that I have in Panama, but he did not deliver it, because he did not find my sister.

Q. Now, did you and he have any conversation about Miss Vargas that afternoon in that parlor in that place on Divisadero Street while you were there? A. Yes.

Q. How long did you talk together there about her?

A. About a half hour, a very short time, because he said he had something to attend to, to do.

Q. What did Blanco say to you about Miss Vargas?

Q. He said that he was very sorry for her, that he had great pity for her, that he was very sorry, and he wanted to arrange everything amicably with

(Testimony of Emma Julian.)

her, because there was no need for any lawyers nor any litigation, nor anything, because everything could be amicably settled.

Q. Did he at that time make any reference to the child that was to be born? A. Yes.

Q. What did he say?

A. That he could pay her hospital expenses.

Q. Did he say anything about its being a girl or a boy, or what he hoped it to be?

A. He said that if the child was a girl to give the child her name, and if it were a boy to give him his name.

Q. Did he make any mention about that he hoped it would be a girl?

A. That is all he said, if it were a girl, give her the mother's name, and if it were a boy give him his name.

Q. Was anything said about he would like to meet Miss Vargas?

A. Yes, he said he would like to see her.

Q. State all that he said in that regard.

A. He said he was [128] very sorry for her, that he would pay the hospital, and that afterward he would pay a pension for the maintenance of herself and the child.

Q. Do you know where Miss Vargas was at that time, whether she was in the city, or not?

A. I do not think she was here then.

Q. Did he ask you whether she was here?

A. Yes.

Q. What did you tell him?

(Testimony of Emma Julian.)

A. I told him that I was not certain whether she was in the city, or not. I did not care to give him any information.

Q. At any rate, did he come there to try and find Miss Vargas? Do you know that, or not?

A. I don't know whether he was trying to find her, or not.

Q. You say he talked half an hour?

A. Yes, he spoke about half an hour, and he never returned to the house any more.

Q. Do you know how he found out where you lived? A. I don't know how he knew it.

Q. At any rate, you had moved, as you testified, when he was away on that trip?

A. Now, it is very simple. It happens that the same telephone that I had in the previous residence was assigned to the new residence, and he advised me over the phone, he announced his coming over the phone, he was coming to the house.

Q. He rang you up before he went out: Is that right? A. Yes.

Q. When did you learn first that Blanco was married?

A. He told me the afternoon when he called on me.

Q. What did he say in that connection?

A. He said he was sorry at what occurred, because he was a married man, and if Ernestine wanted to wait, he would get a divorce and get married with her.

Q. Get married to her?

(Testimony of Emma Julian.)

A. With the girl, with the mother of his child.

Q. The mother of the expected child, or what mother?

A. With the mother of the expected child. [129]

Q. How many times did he say that, if at all, just once, or more than once, or how many times?

A. I did not take particular notice of how many times he repeated it.

Q. You say the mother of his expected child. Did he mention the name of her?

The COURT.—She said Ernestina.

Mr. HUTTON.—Q. When he left, did he say anything about coming back?

A. He did not tell me anything.

Q. Was your conversation friendly, or otherwise?

A. On account of the form of the conversation, when he assured me that he was willing to pay the hospital charges, and also to provide for maintenance, it was friendly.

Q. I will have to make this question leading, it is very difficult to examine these foreign witnesses. Did Blanco on that occasion say that he would get a divorce from his wife, but he had not any case for a divorce against her?

Mr. THACHER.—I would like to object to that. Whatever that may be against Blanco, certainly it is not relevant against the Panama Mail.

The COURT.—Overruled.

A. Yes, he said that he could divorce himself and get married to the girl, but that he did not have any case or reason to get the divorce.

(Testimony of Emma Julian.)

Mr. HUTTON.—Q. Your relations were friendly with Blanco at that time, were they not?

A. I do not think there was any reason for rancor.

Q. They had been friendly right along?

A. Simply as friends; I had seen him one night at my daughter's home, and another time at my house. [130]

Q. Had you ever seen him on any other occasion?

A. One afternoon at the wharf when the vessel was leaving.

Q. Then at that time, all together, you had seen him three times? A. Yes.

Q. He knew, did he not, that Ernestina's sister-in-law was your daughter? A. Oh, yes.

Mr. HUTTON.—I think that is all.

Cross-examination.

Mr. THACHER.—Q. Mrs. Julian, the letter that you say you gave to him to deliver to your sister that you had in Panama, that was the voyage before you saw him in May?

A. Yes, before the month of May.

Q. But it was the voyage on which he was last in before he arrived in the month of May?

A. Yes, I think it was at that time, because that was the second time that I had talked to him.

Q. That was down at the wharf you saw him?

A. When? At the time of the letter?

Q. Yes.

(Testimony of Emma Julian.)

A. No, I think that letter I gave, I handed to him at my daughter's house.

Q. Was that in March?

A. It was the trip that he made before the month of May.

Q. The next previous trip?

A. I don't know. He simply stated that he did not deliver the letter, and did not return it to me.

Q. I understand, but it was not at Christmas time?

A. I think it was, but I don't remember very well —yes, it was in the month of December, about Christmas time.

Q. Then you saw him again at the dock?

A. Yes, I saw him at the wharf after that occasion. [131]

Q. When did you see him at the wharf?

A. The next to the last trip before the trip he made in the month of May.

Q. What was the occasion of your meeting him in March?

A. Nothing, only mere curiosity. I had never seen a vessel leave, and they said it was very pretty.

Q. So you went down there, and at that time in March you saw him?

A. I saw him when the vessel was pulling out.

Q. That was just a friendly visit? A. Yes.

Q. And he was perfectly friendly with you at that time? A. Yes.

Q. Had you been out at court at that time when they were out before the United States Attorney?

(Testimony of Emma Julian.)

A. No.

Q. But you had heard about what happened out there at the United States Court?

A. I had heard something said it was in litigation, or in the course of litigation.

Mr. HUTTON.—Now, at this time I desire to offer in evidence the statement written by Mr. Amaral, dated March 16, 1928, upon the ground that Mr. Thacher interrogated him upon part of it and we are entitled to have the whole of it.

Mr. THACHER.—I make an objection to this. As your Honor well knows, it is claimed that whatever Blanco's position is, it certainly is not the position of the Panama Mail, and as far as any part of the statement I put in to substantiate any part of his testimony is concerned, it is, in my opinion, clearly hearsay, and is objected to.

The COURT.—Overruled.

Mr. HUTTON.—Now, I desire to offer in evidence, if your Honor please, the deposition of the master of the "Ecuador," taken on behalf of the defendant. It was taken subject to all legal objections and exceptions. There is one particular part of it that I desire to object to, and that is he was asked [132] what he would have done if this lady had made complaint to him, and he said that he would have put this man in irons. My contention is that it is immaterial what he would have done after the thing happened, that it was only what precautions he might have taken before that

are material. What happened afterward is, of course, immaterial.

The COURT.—Are you offering this deposition with that reservation?

Mr. HUTTON.—Yes.

The COURT.—It has not been offered yet?

Mr. HUTTON.—No. I am offering it, if your Honor please. What I say is, it was taken subject to all legal objections, and I make objection to that particular portion.

The COURT.—You are offering the deposition?

Mr. HUTTON.—Yes.

The COURT.—Any objection?

Mr. THACHER.—No objection to his offering it. Of course, there is a very serious objection to cutting out that part of the deposition, because, obviously, it is necessary to have before the Court that if there had been any complaint and there was any justification for it, the man would have been put in irons.

The COURT.—I think it is immaterial what he would have done. The objection is sustained.

Mr. HUTTON.—I want to offer the depositions taken on behalf of the defendant, of Curt Zastrow and Russell W. Henry, taken on behalf of the respondent. I desire to call your Honor's attention particularly to the deposition of Zastrow.

The COURT.—Are you going to read the depositions, or do you want me to read them?

Mr. HUTTON.—I will read them if your Honor wishes. [133]

(Testimony of Angela Villavicencio.)

The COURT.—I could read them, and we might save some time thereby.

Mr. HUTTON.—Does your Honor want them deemed read in evidence?

The COURT.—If you wish them deemed read in evidence I will read them during the recess.

Mr. HUTTON.—Very well, the plaintiff rests. [134]

TESTIMONY OF ANGELA VILLAVICENCIO, FOR RESPONDENT.

ANGELA VILLAVICENCIO, called for the respondent, sworn.

Mr. THACHER.—Q. Where do you live?

A. 1319 Stevenson Street.

Q. When did you first arrive in San Francisco?

A. I don't remember the day I arrived, in November.

Q. On what boat? A. The "Ecuador."

Q. Where did you come from?

A. From Nicaragua, Corrinto.

Q. You know Ernestina Vargas, do you?

A. Yes, I know her.

Q. When did you first meet her?

A. At La Libertad.

Q. What were the circumstances of your meeting her?

A. Because we were room-mates together.

Q. In what room? A. In 31.

Q. How did you happen to become room-mates with Ernestina Vargas at La Libertad?

(Testimony of Angela Villavicencio.)

A. Because my passage was second-class passage, and as there was no woman, no other woman passenger in the second-class passage, as I was recommended by the priest at Corrinto, Mr. Henry, they put me over to the first-class.

Q. Where was that that you went into the first-class cabin? A. At La Libertad.

Q. What time at La Libertad did you go into room 31?

A. About between 5 and 6 o'clock P. M. in the afternoon.

Q. While you were at La Libertad?

A. Yes, at La Libertad.

Q. Did you meet Ernestina there when you came into the stateroom?

A. No, I did not meet her in the stateroom. We met on deck.

Q. Before you both went to bed that night?

A. Yes.

Q. Which berth did you occupy?

A. The one that is nearest the door of the stateroom.

Q. You slept there every night?

A. Yes, every night until [135] we arrived here.

Q. You got up after the breakfast bell rang, or about that time? A. Yes.

Q. And you used to talk to Ernestina on and off between the time you came into the room at La Libertad and the time you arrived at San Francisco? A. Yes, we spoke.

(Testimony of Angela Villavicencio.)

Q. Did she make any complaint about Blanco to you? A. No.

Q. Did you used to see Ernestina around on deck? A. Yes.

Q. Who did you used to see her talking to on deck?

Mr. HUTTON.—That is assuming that you did see her talking.

The COURT.—Q. Did you see her talking to anybody on deck?

A. Yes, she spoke with the passengers.

Mr. THACHER.—Q. Who, in particular, did you see her around with?

A. She spoke a great deal with some passengers who were coming from Guatemala.

Q. Did one of those passengers have the next steamer chair to her?

A. On deck all chairs were together there.

Q. Was there a man named Wolff who had the next chair to her on deck? A. Yes.

Q. Did you used to see her dancing on the steamer? A. Yes.

Q. Who did she used to dance with, in particular? A. With Wolff.

Q. Did she dance very frequently with him?

A. Yes.

Q. She danced frequently with him? A. Yes.

Q. How old a man was he? A. I don't know.

Q. Was he 20, or 25, or something of that kind?

A. About 25 years old.

(Testimony of Angela Villavicencio.)

Q. He was the student that was coming up here to San Francisco?

Mr. HUTTON.—I object to that.

Mr. THACHER.—She has testified to it on direct examination. [136] That is all.

Cross-examination.

Mr. HUTTON.—Q. How old are you?

A. 21 years old.

Q. Where were you born?

A. At Corrinto.

Q. How far is Corrinto away from La Libertad?

A. I don't know.

Q. How long did it take you to come from Corrinto to La Libertad?

A. About two and one-half days.

Q. You slept in the second cabin, then, from Corrinto to La Libertad? A. Yes.

Q. Then when you got to La Libertad you claim you were moved out of the second cabin and put in with Miss Vargas? A. Yes.

Q. Now, was it Father Higgins, or Father Henry, that recommended you in Corrinto?

A. That name is Higgins.

Q. Were there any Chinamen came aboard the vessel after you joined her in Corrinto? A. Yes.

Q. Where did they come aboard?

A. I don't remember.

Q. Didn't they come aboard in San Jose de Guatemala?

A. I don't remember, I could not say.

(Testimony of Angela Villavicencio.)

Q. They were not there when you left Corrinto, were they?

A. No, they were not. There were some Chinamen also then aboard.

Q. But wasn't there a large number came aboard after you left Corrinto? A. No.

Q. You don't remember that? A. No.

Q. At any rate, you stayed in the second cabin, where the Chinamen were, for two and a half days: Is that correct? A. Yes.

Q. Then you were moved? A. Yes.

Q. Now, did you sleep in the second cabin for two or three nights, or four nights, or how many nights? A. For two nights. [137]

Q. How did you come to be a witness here?

A. Because they sent a paper to me where I worked, in order to have me present myself here. They sent a summons.

Q. Have you ever talked to anybody about this case before you came to this building? A. No.

Q. Never said anything to anybody about it?

A. No.

Q. Never talked to Mr. Thacher about it?

A. No.

Q. Never talked to this gentleman seated over here by the table, Mr. Casey? A. No.

Q. When was the first time you ever saw Mr. Casey? A. At my work.

Q. Mr. Casey did call on you, then, at your work?

A. To solicit permission that I could come here.

Q. Did he talk to you about the case at that time?

(Testimony of Angela Villavicencio.)

A. He had to talk to me in order to tell me the reason why I had to come.

Q. He then did talk to you about your trip up here? A. Yes.

Q. You say that you arrived here in November, 1927? A. Yes.

Q. Do you know what day of the month it was you left Corrinto?

A. The day I don't remember, but I do remember the date, the 8th of October.

Q. On the 8th of October?

A. Yes, the 8th of October.

Q. You left Corrinto the 8th of October?

A. Yes.

Q. How do you remember that date?

A. Because I had my passport.

Q. Have you got your passport with you now?

A. Yes, I have my passport here (witness produces passport dated Corrinto, October 8, 1920).

Q. What time did you go to your room, 31? What hour of the day did you go to that room?

A. Right when I went to bed.

Q. Do you remember what hour that was?

A. I was in the habit [138] of going to bed at nine or half past nine or ten o'clock.

Q. Was Miss Vargas in bed the first time you went there? A. No.

Q. Miss Vargas was sick all the way up, was she?

A. Yes.

Q. Didn't you and she sit in chairs alongside of one another on the upper deck all the way up?

(Testimony of Angela Villavicencio.)

A. We were seated, but not always, because I did not buy or rent a deck chair.

Q. How many times do you claim you saw Miss Vargas dance? A. I can't recall that.

Q. You don't remember how many times?

A. No.

Q. Did you tell this gentleman, over here, that went to get permission for you to come up here, that you had seen Miss Vargas dance? A. Yes.

Q. You did? A. Yes.

Q. You did talk to somebody about this case?

A. Undoubtedly, when they asked questions, when they interrogate me.

Q. They did interrogate you?

A. They asked me concerning the trip, how it happened.

Q. Who asked you that?

A. The gentleman who stood up.

Q. Mr. Casey? A. Yes.

Q. When did he do that?

A. This morning, to-day.

Q. That is the first time he talked to you?

A. Yes.

Mr. HUTTON.—I think that is all.

Redirect Examination.

Mr. THACHER.—Q. You never saw any man in that room while you were there?

A. No.

TESTIMONY OF ANNE RUSSELL, FOR DEFENDANT (RECALLED).

ANNE RUSSELL, recalled for defendant.

Mr. THACHER.—Q. Miss Russell, I think the day before [139] yesterday I showed you a copy of this transcript which you took before Commissioner Krull?

A. Yes.

Q. Do you understand Spanish?

A. Yes, I do.

Q. Did you understand what Miss Vargas was saying at the hearing before Commissioner Krull?

A. Every word.

Q. And you took down every word accurately and exactly?

A. Every word accurately—an exact translation of all that she said.

Q. Was an interpreter there, too, another interpreter? A. Yes.

Q. Also an interpreter present, who was there all the time? A. Yes.

Q. So he repeated to you the exact translation, and that was exactly correct, because you understood it? A. Yes.

Mr. THACHER.—That is all.

Cross-examination.

Mr. HUTTON.—Q. I asked you the other day whether you had put down everything that had occurred, and you stated that you had. A. Yes.

(Testimony of Anne Russell.)

Q. You say you put down everything that occurred?

A. I took down everything of Miss Vargas' statement.

Q. How long did you stay down at Commissioner Krull's room?

A. I stayed there the length of time required to write that.

Q. Did you stay there as long as Mr. Hatfield stayed there?

A. I don't remember whether Mr. Hatfield went through the door with me at the same time as I did, or not.

Q. Do you know Mr. Grant, in this building—do you know the bailiff in Judge Kerrigan's court?

A. No, I do not.

Q. Did you see a big, fat man there?

A. I really don't remember.

Q. With a star on his breast?

A. I don't remember. [140]

Q. Did you see a man there with a star on his breast that acted as interpreter?

A. The interpreter, I believe, was a white-haired man, but I don't remember anything else about his appearance.

Q. You don't remember? A. No.

Q. Do you remember any of the incidents that occurred there, other than what you wrote down?

A. No.

Q. Were you there when this occurred, that Com-

(Testimony of Anne Russell.)

missioner Krull stated that this was a case of seduction—

Mr. THACHER.—I object to that.

Mr. HUTTON.—I want to find out if he put it all down.

The COURT.—Overruled.

Mr. HUTTON.—Q. (Continuing.) That this was a case of seduction, but he did not hardly think it was rape, and that the best thing for them to do was to take the girl down to the company's office and try to make some financial arrangement with her? I mean were you there when that occurred?

A. I don't remember.

Q. Do you remember Mr. Hatfield agreeing with that conclusion of Mr. Krull?

Mr. THACHER.—I object to that and ask that it go out. It is totally irrelevant.

Mr. HUTTON.—I want to find out how much she knows.

The COURT.—Overruled.

Mr. HUTTON.—Q. Do you remember Mr. Hatfield agreeing with that conclusion?

A. I am sorry, I don't remember.

Q. You don't remember anything of that?

A. No.

Q. Did you see Mr. Grant, a man named Grant, who is a bailiff in Judge Kerrigan's court, go over to Miss Vargas and give her a card, this card?

A. I don't know Mr. Grant, so I could hardly have seen him do anything. [141]

(Testimony of Anne Russell.)

Q. Did you see anybody there hand a card like that?

A. I don't remember seeing anyone hand her a card, no.

Q. I will ask you again, who left Mr. Krull's office first, if you can remember—whether you left first, or did Mr. Hatfield leave first?

A. I don't remember.

Q. You don't remember whether you both left together, or not? A. No, I do not.

Q. You were there to take down the proceedings, were you not?

A. I was there to take down the statement of Miss Vargas, and I did that.

Q. And not to take down what occurred?

A. I was not to take down a description of the movements in that room, no.

Q. Not to take down what Commissioner Krull said, or what he did? A. No.

Q. You were there for one limited purpose?

A. Certainly.

Mr. HUTTON.—That is all.

Redirect Examination.

Mr. THACHER.—Q. Do you remember Mr. Hatfield saying that this was nothing but an attempt to shake down the company, or words to that effect?

A. I don't remember anything else that was said; that took place a long while ago. What I have in my statement I am sure of, otherwise I don't remember.

TESTIMONY OF NED FREDERICK LORENZEN, FOR DEFENDANT.

NED FREDERICK LORENZEN, called for the defendant, sworn.

Mr. THACHER.—Q. Mr. Lorenzen, what is your occupation? A. Purser.

Q. At the present time, whom are you employed by?

A. I am employed by the United Fruit Company.

Q. What was your occupation in 1927?

A. I was purser of the steamer "Ecuador."

Q. What were your general duties as such purser? [142]

A. To take care of the company's business, the comfort of the passengers, and *and* general routine as purser.

Q. Do you speak Spanish?

A. Yes, enough to handle any situation that might arise.

Q. Do you remember a girl by the name of Angela coming on board the boat when she was down on the West Coast—I have forgotten her last name?

A. I believe, after I talked the matter over, that she was a passenger from Corrinto, Nicaragua, to San Francisco, a steerage passenger.

Q. You remember the girl, Angela? A. Yes.

Q. What rooms or staterooms was she in on the way up?

A. She was at first in the women's steerage, and later transferred to Cabin 31.

(Testimony of Ned Frederick Lorenzen.)

Q. When was she transferred to Cabin 31?

A. At the port of La Libertad.

Q. How do you know?

A. Because that is a port that we always transfer our passengers around, and in this particular case there was a great number of Chinese passengers in the steerage, and she was the only woman left, and so we transferred her.

Q. How do you know it was done at La Libertad?

A. Because that is the place the chief steward and I always confer in regard to the shifting of passengers.

Q. In this case did you so confer? A. Yes.

Q. Did you order that she be transferred?

A. Yes.

Q. How do you know that she was transferred?

A. Well, we have our daily inspection, and I saw her as a matter of routine on board that ship.

Q. The day after you left La Libertad, what did the inspection show?

A. The inspection showed that she was there.

Q. That is, in what room? A. In Room 31.

Q. Do you know a man by the name of Jose Blanco Reyes? [143]

A. Yes, I have know him for quite a few years.

Q. What do you mean by "quite a few years"?

A. At least five years.

Q. How long has he worked on the same steamer with you?

A. I know of one period of over a year on the "Ecuador."

(Testimony of Ned Frederick Lorenzen.)

Q. What reputation has he enjoyed?

A. He has enjoyed the best reputation, he is very strict with his men, he is clean, he is always on the job.

Q. What complaints, if any, have you heard against him?

A. I have never heard any complaints against him. I have heard a great many boosts for him. They always tell the purser whether they like a man, or not.

Mr. THACHER.—That is all.

Cross-examination.

Mr. HUTTON.—Q. How many trips have you made up and down that coast?

A. Well, we make about four trips a year, sometimes five trips a year.

Q. Where are you employed now?

A. With the United Fruit Company.

Q. How fast is the "Ecuador"?

A. She will make about ten knots.

Q. Can't she go faster than that?

A. Yes, she can go faster.

Q. Her average speed is about ten knots?

A. Yes.

Q. How long did it used to take you to run from Corrinto to La Libertad?

A. That depends on weather conditions.

Q. It takes about half a day, doesn't it?

A. From Corrinto to La Libertad?

Q. Yes, Corrinto to La Libertad.

(Testimony of Ned Frederick Lorenzen.)

A. It all depends, if you touch in at another port, if you touch in at the port of La Union—

Q. Suppose you did not touch at the port of La Union, what then?

A. Then it would take you fourteen or fifteen hours.

Q. About 150 miles, or a little less than 150 miles?

[144] A. That all depends on the course.

Q. If you stop in at La Union, you stop in for passengers? A. Freight or passengers.

Q. You do not usually stop long at La Union?

A. It is impossible to tell the length of the stay of the vessel, on account of the cargo.

Q. It is usually three or four hours, isn't it?

A. It can't be stated, because it depends upon the amount of cargo operated.

Q. What is the usual stay, the average stay, there at La Union?

Mr. THACHER.—If your Honor please, I object to this line of examination, simply because it is time-consuming. It is not relevant.

Mr. HUTTON.—It goes directly to the testimony of Miss Angela.

Mr. THACHER.—The testimony as to the stay of this vessel is already in, through the captain, who has already testified.

Mr. HUTTON.—Q. What is the average stay there?

A. It is impossible to tell you, I could not tell you that, it all depends on the cargo.

(Testimony of Ned Frederick Lorenzen.)

Q. You say you have made three or four trips a year. What is the longest you have ever known the boat to stay at La Union?

A. I was there once for two weeks.

Q. What was the matter, did you have a wreck, or something?

A. An accident. I have been there from two hours to four days.

Q. Ordinarily, how long do you usually stay at La Union?

A. An average, for a number of years, I would say twenty-four hours.

Q. That is the longest you have stayed?

A. No, that is not the longest. [145]

Q. How far is Corrinto from La Union?

A. About 73 miles—I couldn't remember exactly.

Q. Is it south, or north? A. Of Corrinto?

Q. Yes.

A. It is north of Corrinto, it is in the general direction of the north.

Q. How far is it from La Union to La Libertad?

A. La Libertad is generally north of La Union?

Q. But how far is it from La Libertad to La Union?

A. I am not a navigator, I can't remember the mileage.

Q. But you do it in three or four hours, as a rule? A. It is about 120 miles.

Q. Now, will you say it is more than 150 miles from Corrinto to La Libertad?

A. No, I don't know. I am not a navigator.

(Testimony of Ned Frederick Lorenzen.)

Q. But, at any rate, you usually made it in 12 or 15 hours, if you did not stop at La Union?

A. It all depends on the cargo.

Q. But, I say, if you did not stop at La Union, you used to make it from Corrinto to La Libertad in 12 or 15 hours? A. About that, yes.

Q. Do you remember the purser of the vessel, or the steward of the vessel, coming to you on one occasion, and telling you that the young lady in Room 31 wanted a companion there?

A. I don't remember.

Q. Will you say that did not happen?

A. I don't remember.

Q. You can't remember that? A. No.

Q. At any rate, the steward took up with you the putting of someone in Room 31 on that trip, didn't he? A. Yes.

Q. He did? A. Yes.

Q. He went to you and asked you to put somebody in Room 31, didn't he?

A. Not exactly; we conferred on the matter, and we decided together on Room 31. He had no idea what [146] room I would decide to place her in. I never let the chief steward decide which room I am placing passengers in when rooms are available.

Q. You talked it over with the steward?

A. Yes.

Q. And on the day you talked it over this Angela was put in Room 31, that is correct, is it not?

A. Yes.

TESTIMONY OF MAURICE SHENICK, FOR DEFENDANT (RECALLED).

MAURICE SHENICK recalled for defendant.

Mr. THACHER.—Q. Mr. Shenick, you are not with the Panama Mail now, are you? A. No.

Q. You were asked yesterday, when you were under redirect examination by Mr. Hutton, as to some kind of a meeting, or some kind of a talk down on the dock shortly after this plaintiff, here, had come from court before the Commissioner. What was said at that meeting?

A. The meeting was practically entirely in Spanish, which I do not understand. The only thing I understand was at the close of the meeting, when the young man who was with the brother and sister asked him if he wanted a receipt for the money that had been turned over, and Blanco asked him if a receipt was necessary, and I asked him what it was for, and he told me it was for some hats, and I said, "Do you think it is necessary," and he said, "No, never mind."

Q. State whether or not there was any other conversation in English relative to anything other than this matter of hats? A. No.

Q. State whether or not you made any suggestion to Blanco to pay any sum of money to this woman who later on bore this child?

A. No, I had no conversation with him.

Mr. THACHER.—That is all. [147]

(Testimony of Maurice Shenick.)

Cross-examination.

Mr. HUTTON.—I will ask you, Mr. Shenick, didn't you, in Mr. Krull's office, tell a gentleman named Mr. Grant to give this young lady that card that I showed you when you were last on the stand, so that she would know where to go to see you and talk it over with you about Blanco compensating her for the assault he had made on her?

A. No.

Q. You say that did not occur?

A. They wanted to know, somebody asked me if they could see Blanco, and I said, "You can see him down on the dock," I don't know who the gentleman was, and I gave the card to the little man who was standing here yesterday.

Q. Didn't Mr. Hatfield on that occasion, and Mr. Krull say that the proper thing for the company to do was to take that girl down into the office and make some financial arrangement with her, or say that in effect?

Mr. THACHER.—That is objected to.

The COURT.—Overruled.

A. No.

Mr. HUTTON.—Q. Didn't you, at the expiration of that, say to Mr. Grant, "Give the girl that card so she will know where to come to?"

A. No.

Mr. HUTTON.—I will ask your Honor to instruct Mr. Shenick to remain here within call.

The COURT.—Yes, remain within call. [148]

TESTIMONY OF CASSIUS C. MALLORY, FOR DEFENDANT.

CASSIUS C. MALLORY, called for the defendant, sworn.

Mr. THACHER.—Q. Mr. Mallory, what is your occupation?

A. Assistant general manager and treasurer of the Panama Mail Steamship Company.

Q. How long have you had that office?

A. About three years.

Q. That is since the organization of the company?

A. Since it was organized in 1925.

Q. What are your duties?

Mr. HUTTON.—He can state what he does.

A. General supervision—

Mr. HUTTON.—Let him tell what he does.

A. General manager of the company during the absence or under the direction of our general manager, looking after the personnel of the office, ship supplies, everything in general.

Q. Who is your present president and vice-president?

A. Mr. E. T. Ford is the president, and Gail H. Carter is vice-president.

Q. Mr. Carter, the vice-president, is president of the Grace Steamship Company, in New York?

A. Yes.

Q. And Mr. Ford, the president, is vice-president of W. R. Grace & Co.? A. Yes.

(Testimony of Cassius C. Mallory.)

Q. State whether or not either of them have anything to do with the actual operation of that line.

A. No, they do not, [149] except in connection with the financial arrangements of the company.

Q. That leaves who to actually run the line?

A. Mr. Dalton Mann is the general manager.

Q. You are under him? A. Yes.

Q. Is he away a good deal?

A. He is away a good deal.

Q. He goes to Europe annually? A. Yes.

Q. Do you know this man, Jose Blanco?

A. I do.

Q. What dealings have you had with him?

A. Considerable. Every time the ship is in port I am on board every day.

Q. At the time you go on board, do you see Blanco when he is on board? A. Yes.

Q. How long have you employed him?

A. Well, he has been with the company for—I don't recall the record—ever since the company was organized, I believe.

The COURT.—He is with the company now?

A. Yes.

Q. Where is he now?

A. On board the "Ecuador."

Mr. THACHER.—Q. What reputation has he enjoyed?

A. A very good reputation.

Q. Ever have any complaints against him?

A. No; if we had any serious complaints we

(Testimony of Cassius C. Mallory.)

would never have retained him, we never had complaints.

Q. Until this matter came up? A. Yes.

Q. When was the first time you heard of this matter?

A. When it was published in the San Francisco "Call." The next day there was a notice served on us.

Q. When you saw that in the papers? A. Yes.

Q. You are familiar with Room 31 on the "Ecuador"? A. Yes.

Q. Let me ask you now, how many vessels have you got operating?

A. We have seven at the present time, which we own, and two under charter.

Q. That is nine steamers operating?

A. Yes. [150]

Q. Five between here and New York?

A. Four at the present time.

Q. What location is Room 31?

A. On the port side forward.

Q. Mr. Mallory, how is Room 31 ventilated?

A. There are ventilators along the top, and inboard side, on the alleyway.

Q. By ventilated that way, what do you mean? Do you mean it is open?

A. It is open, there is a screen, a kind of grille work on the top.

Q. An iron grille work? A. Yes.

Q. What would be the effect of any unusual noise in room 31?

(Testimony of Cassius C. Mallory.)

A. It would be heard in the alleyway.

Mr. HUTTON.—I object to that on the ground it is calling for the opinion of the witness.

The COURT.—Sustained. I have not heard any testimony of any noise, whatever.

Mr. THACHER.—But, of course, it is important to establish that had there been any noise it would have been heard.

Q. You say there is a lattice work, an open lattice work on the top of the room? A. Yes.

Q. And that is so the air travels back and forth from the room into the alleyway

A. Yes, these ventilators run into the alleyway, for ventilation purposes.

Q. Where is the barber-shop, in that connection?

A. Just across the alleyway, a little bit aft.

Q. That is around how many feet, would you say?

A. Probably ten or fifteen feet.

Q. Does the barber sleep in his room?

A. Yes.

Q. Did all the other rooms on the alleyway have that same open work? A. Yes.

Q. So that air from the alleyway goes continuously into these rooms? A. Yes. [151]

Q. Have you ever traveled on the same vessel with Blanco? A. I have.

Q. When was that?

A. I went down on the "Ecuador" in January of 1928.

Q. From here to where?

A. From here to La Libertad.

(Testimony of Cassius C. Mallory.)

Q. How did you find him? A. Very good.

Q. Can you tell me what the general schedule is in regard to what is done on board the ship?

Mr. HUTTON.—I don't think that is material. How can we meet it?

The COURT.—What is the difference?

Mr. THACHER.—Simply to show when the bell is rung, and when the ship goes to work.

The COURT.—There is some testimony in the deposition, I think, of the captain, is there not, as to who answers the bells?

Mr. THACHER.—I think so.

The COURT.—Why take up time on that?

Mr. THACHER.—That is all.

Cross-examination.

Mr. HUTTON.—Q. Did you ever hear anything about your second steward coming up to Mr. Krull's office? A. I did not.

Q. Never heard anything about that? A. No.

Q. It appears in evidence that he was here about the 14th or 15th of March, 1928, and this case was not commenced, I think, until March 24, 1928. You say you did not know anything about Miss Vargas until you saw it in the "Call"? A. I did not.

Q. Never heard anything about it until that time?

A. No.

Q. How much is your company capitalized for?

A. $1,500,000. [152]

Q. How much property?

A. We have seven steamers.

(Testimony of Cassius C. Mallory.)

Q. Are they all as large as the "Ecuador"?

A. There are four as large as the "Ecuador," including the "Ecuador."

Q. Are they all operating at this time?

A. Yes, except the "Ecuador," she is in difficulty.

Q. What is the passenger capacity of the "Ecuador"? A. About 110 cabin.

Q. 109, is it not? A. 109 or 110.

Q. Do you know how many passengers she had on that trip coming into San Pedro?

A. I do not.

Q. Calling your attention to Libelant's Exhiibt No. 2, that is correct, is it not?

A. Correct in what respect?

Q. The number of passengers.

A. That is not dependable. The official immigration list is the list you can depend on.

Q. I mean saloon passengers.

A. It is not exactly dependable as to that. There may be passengers join who are not on this list. This is not an official list.

Q. Where was that issued?

A. Printed aboard the ship.

Q. Printed on the ship? A. Yes.

Q. Before she got into San Pedro? A. Yes.

Q. Who printed it?

A. The printer on board the ship.

Q. He is sent around to gather the names of the passengers?

A. It is supplied by the printer.

Q. He gets as full information as he can?

(Testimony of Cassius C. Mallory.)

A. It is supplied by the purser.

Q. By the purser? A. Yes.

Q. The printer is employed by the ship?

A. Yes.

Q. Does the purser give the names to the man who prints the list?

A. He gives him the names, but there may be a passenger join after he gives the printer the names.

Q. Have you any published time schedule of the steamers?

A. I traveled on the ship, myself, as a passenger, and they [153] did not get my name on the list, so that is not always correct.

Q. That was because you are an officer of the company?

A. No, that is not because I am an officer of the company.

Q. Have you any published time schedule of your steamers?

A. There is a published schedule.

Q. Does it give the time between ports and the ports of call from New York to San Pedro?

A. It gives the approximate date of arrival and departure from each port.

Q. From each port? A. Yes.

Q. Do you know where I can get one of these?

A. We have them at the office.

Q. That would give the probable date of a steamer leaving Corrinto, and probable date of her arriving at La Libertad?

(Testimony of Cassius C. Mallory.)

A. It would give the date that they expected to, it would give the expected date.

Q. It is approximately a fifteen-hour run, is it not?

A. I do not recall the exact run from Corrinto to La Libertad.

Q. It is about half a day or fifteen hours' run?

A. I would not say, I do not recall the mileage; I did not look it up before coming in.

Q. Don't you know it is only about 130 to 140 miles, less than 150?

A. I do not know. I will look it up and answer the question at any time you wish it.

Q. You have made that trip, haven't you?

A. No, only as far as La Libertad.

Q. You never went to Corrinto? A. No.

Mr. HUTTON.—Have you got a time sheet?

Mr. THACHER.—Yes.

A. The mileage is on the back of that.

Mr. HUTTON.—This gives from Corrinto to La Union 72 miles. That is approximately correct?

A. I presume so. [154]

Q. From La Union to La Libertad, 102 miles; that would make it 174 miles from Corrinto to La Libertad? A. Yes.

Q. Is there anything on that that shows the sailing time from La Union or from Corrinto, and the corresponding sailing time from La Libertad?

A. Yes, this date they sailed from Corrinto at 8:16 A. M., October 9.

Q. From where? A. From Corrinto.

(Testimony of Cassius C. Mallory.)

Q. October 9?

A. They arrived at Corrinto October 8, 6:06 A. M., and passengers are permitted to join when the vessel arrives.

Q. She sailed on October 9? A. Yes.

Q. What day did she arrive in La Libertad?

A. October 10, 10:46 A. M. She stopped at La Union in the interim.

Q. How long did it take her to go from Corrinto to La Libertad?

A. A little over five hours from Corrinto to La Union, and it took her eight hours from La Union to La Libertad.

Q. It took her thirteen hours sailing time?

A. Yes.

Mr. HUTTON.—That is all.

Mr. THACHER.—I will offer this in evidence for your Honor's convenience as Defendant's Exhibit "D."

(The document was marked Defendant's Exhibit "D.")

Q. Mr. Mallory, let me ask you another question along the distance line: What do *you* records show as to where the women passengers left the steerage on the "Ecuador" on this voyage?

Mr. HUTTON.—The records would be the best evidence.

Mr. THACHER.—The records are the best evidence, and I can bring them here, but I do not see why the case should be delayed.

(Testimony of Cassius C. Mallory.)

A. The records indicate that the last woman departed at La Libertad, outside of this one left—there were two joined at Corrinto, one of them disembarked at La Libertad, leaving [155] but one girl in the steerage.

Q. That is what your records show?

A. Yes.

Mr. HUTTON.—I want to look at your records.

Mr. THACHER.—Your orders are to transfer girls, when they are single, in the steerage?

A. Yes.

Mr. HUTTON.—I would like to look at that record.

Mr. THACHER.—You can inspect it at the office, or we will send down for it. We do not like to have the case delayed for that.

Recross-examination.

Mr. HUTTON.—Q. How much a month does Blanco get?

A. $100 a month.

Q. You have still got him in your employ?

A. Yes.

Q. Holding the same position on the "Ecuador"?

A. Yes.

Q. You have kept him in your employ after receiving notice of this action? A. Yes.

Mr. THACHER.—You heard, when you received notice of this action, that Mr. Hatfield had thrown it out because he said it was a frame-up?

Mr. HUTTON.—I object to that as hearsay.

(Testimony of Louis T. Grant.)

The COURT.—It will go out; objection sustained.

Mr. THACHER.—That is all. [156]

Mr. THACHER.—I offer the deposition of Jose Blanco Reyes, taken on May 31, 1928.

The COURT.—Let it be deemed read in evidence. I will read the deposition.

Mr. THACHER.—The defendant rests.

TESTIMONY OF LOUIS T. GRANT, FOR PLAINTIFF (IN REBUTTAL).

LOUIS T. GRANT, called for plaintiff in rebuttal, sworn.

Mr. HUTTON.—Q. Mr. Grant, were you down in Commissioner Krull's office in March, last year, at the time a man named Jose Blanco, or Jose Blanco Reyes was there?

A. I was.

Q. Did you see that gentleman seated in front, here, there? A. I did.

Q. I show you that card. Did you ever see that card before, or a similar card?

A. I don't know whether I seen this one before, but I saw a similar card.

Q. Who did you get the card from?

A. I gave it to that lady right there.

Q. Who did you get it from?

A. I won't positively say whether Mr. Shenick handed that to me, or someone seated alongside of him, but one or the other of them did.

Q. What did you give it to Miss Vargas for?

(Testimony of Louis T. Grant.)

Mr. THACHER.—Let him testify as to any conversation. That is objected to.

The COURT.—Sustained.

Mr. HUTTON.—This is to impeach their witness.

The COURT.—Let him tell what the conversation was.

Mr. HUTTON.—Q. State the conversation, everything that occurred there.

A. The conversation was that she was to go to the steamship office and there was to be some arrangement made whereby Mr. [157] Blanco was to provide for her during the period that she was advancing to, and also that there was to be some arrangement made whereby he would provide the ways and means to contribute toward the support of the child after it was born. That was the conversation, the gist of it. I don't remember the exact words.

Q. Who participated in that conversation?

A. The Commissioner, the District Attorney—

Q. The United States Attorney?

A. The United States District Attorney, Mr. Hatfield, and whoever was representing Mr. Blanco at that time, some attorney, I don't know who it was, I don't remember who it was. However, I translated the gist of this conversation to that lady, there.

Q. And told her to go down to the company's office the next day? A. I did.

Q. For the purpose that you have stated?

A. Yes.

(Testimony of Louis T. Grant.)

Q. And did Mr. Krull participate in it?

A. He did.

Q. Was Mr. Shenick there at the time?

A. He was.

Q. Was he close to Mr. Krull?

A. Right opposite to him, across the table from him.

Q. What did Mr. Krull say?

A. Well, the Commissioner suggested that some arrangement of that kind should be made, and they discussed it among them there, and the gist of the entire conversation is what I told here, and advised her then the next morning about taking this card and going to that place the next morning, I think either ten or eleven o'clock, until some definite arrangement could be made.

Q. What do you mean by "some definite arrangement"—financial arrangement?

A. So that the steamship company, as I understood the conversation at that time—that an arrangement was to be made whereby the steamship company would take [158] from his salary a certain amount of money that was to be agreed upon, and pay it over to her.

Q. Was the secretary of Mr. Hatfield there at the time?

A. I won't be positive about that. My impression is she was but I would not positively say.

Q. She had been there?

A. She had been there, yes.

(Testimony of Louis T. Grant.)

Q. But you don't know whether she stayed during that conversation? A. No, I do not.

Q. How long did the conversation take?

A. I should say ten or fifteen minutes, all together.

Mr. HUTTON.—That is all.

Cross-examination.

Mr. THACHER.—Q. Who was there at that conversation?

A. The Commissioner, Mr. Hatfield, United States District Attorney, myself, that lady, there, Mr. Shenick, the attorney representing him, and several others that I do not remember. There was quite a crowd in there, I should say possibly a dozen all together, in the Commissioner's office.

Q. An attorney representing whom?

A. Mr. Shenick.

Q. How do you know?

A. The steward, representing the steward.

Q. How do you know he was representing the steward? You mean the accused man, Joe Blanco?

A. That is what I mean, yes, the accused man, Joe Blanco.

Q. How do you know that there was an attorney there representing him?

A. Because he said that he was.

Q. He did not state who he was?

A. No—if he did I have no recollection of who it was.

(Testimony of Louis T. Grant.)

Q. Did you say most of the talking was done by Commissioner Krull?

A. No, not most of it. The conversation was fairly general, participated in between the District Attorney, [159] Mr. Krull, that gentleman whose card I had there, and several others.

Q. Can you state what was said, the gist of what was said by Mr. Krull, and what was said by Mr. Hatfield, and what was said by Mr. Shenick?

A. No, I cannot in detail. As I remember the case, Mr. Hatfield, after completing the examination of that lady, there, said that in his opinion it was a case of seduction, and Mr. Krull, as I remember it, suggested that it was a case that was provided for under the laws of the State of California, and unquestionably the lady should have some relief by that means, if she could not get the relief in his office, as I remember it.

Q. That it was a matter for the State courts to take care of?

A. Yes, and that undoubtedly some arrangement could be arrived at without going to that extreme, and then it resulted in this conversation which I have just repeated.

Q. Do you remember the gist of what Mr. Shenick had to say, if anything? A. No, I do not.

Q. You do not remember anything in particular about what his contribution to the conversation was?

A. Not any more than, as I remember it, he said that they would meet the next morning at the steamship company's office, and some arrangement could

(Testimony of Louis T. Grant.)

undoubtedly be made, something to that effect. I do not remember the details of that.

Mr. HUTTON.—Q. Did Mr. Blanco at any time deny his responsibility for what this girl charged him with?

A. No, he never had a word to say, at all.

Q. Did he acquiesce in the arrangement of her going down there? A. So far as I know.

Q. At any rate, he made no objection to it?

A. No.

Mr. THACHER.—Q. At this conversation you say there was [160] the Commissioner, Mr. Hatfield, Mr. Shenick, and an attorney. Was Mr. Blanco there?

A. The steward?

Q. Yes. A. Yes, he was there.

Q. He was there beside Mr. Shenick? A. Yes.

Mr. THACHER.—That is all.

TESTIMONY OF FRANCIS KRULL, FOR DEFENDANT (IN SURREBUTTAL).

FRANCIS KRULL, called for the defendant in surrebuttal, sworn.

Mr. THACHER.—Q. Mr. Krull, you were the United States Commissioner before whom the charges against this man Blanco were brought last March by Miss Vargas?

A. Yes, March 15 there was a complaint by Ernestina Isabelle Vargas charging Jose Blanco Reyes with an assault under Section 278 of the

(Testimony of Francis Krull.)

Criminal Code, that is, he was charged with rape on the high seas on board the steamer "Ecuador," committed on or about October 12, 1927.

Q. What was the disposition of the case?

A. The charge of rape was dismissed.

Q. Did you ever hear the name of the Panama Mail mentioned as being possibly liable on any charge of seduction?

Mr. HUTTON.—I object to that. I submit he might ask for the conversation.

The COURT.—Yes.

Mr. THACHER.—Q. What was the conversation, if any, if you remember?

A. There was considerable conversation. The United States Attorney was present at this hearing, and went into the case quite in detail, and after I determined that there was not a case of rape, I suggested that there was a possibility of a case of seduction, and then a conversation ensued between the United States attorney and the parties there, and the United States Attorney suggested that the [161] plaintiff might pursue her remedy in the state court.

Q. Against whom?

A. It was not definitely stated.

Q. Did you ever hear of the Panama Mail being mentioned as being possibly liable, or anything of that kind?

Mr. HUTTON.—If your Honor please, I object to that.

(Testimony of Francis Krull.)

The COURT.—The objection is sustained. Let him state what the rest of the conversation was.

A. After my dismissal of the charge, of course the seduction provision of the statute provides that if there is intermarriage between the parties that is a bar to a conviction, and of course if developed in this case that there could be no marriage, because the defendant in the case was already married, and then this conversation ensued. There was some suggestion that I remember—of course, the conversation is not in my memory, but there was some suggestion that they would come together on it.

Mr. THACHER.—Q. Who has to come together?

A. The parties there present.

Q. What parties do you mean?

A. Blanco was there, and there was someone there that represented the steamship company.

Q. Do you remember what the conversation was?

A. I did not enter into that conversation; they left the room and talked outside for a considerable time.

Q. What is the exact entry in your book?

A. The exact entry is "after a detailed and full hearing the evidence is not sufficient to warrant a holding on the charge of rape, and the case is accordingly dismissed and the defendant discharged for this particular offense." Then there is a note here, "U. S. Attorney suggested that the complainant make complaint to the state court on account of her condition."

(Testimony of Francis Krull.)

Q. It don't say whether it was a proposed proceeding, or [162] what he had in mind?

A. No.

Cross-examination.

Mr. HUTTON.—Do you remember having a conversation with me on the next day?

A. You came in and asked me about the situation.

Q. Do you remember telling me on that occasion that the understanding was that the girl was to go down to the Panama Mail Steamship Company office that day and see if she could not make some financial arrangement?

A. I do not think I said the Panama Mail Steamship Company, because I was not really aware of what company owned the vessel.

Q. You said the company's office?

A. Yes, they were to go down to the company's office; I think that was probably what I said.

Q. And do you remember my telling you on that occasion that I thought the case was one of rape?

A. You did make some statement. I think I mentioned to you that if it was anything it was seduction, from the evidence that I heard.

Q. Blanco or Blanco Reyes was there?

A. He was present at the hearing.

Q. He never made any denial of this girl's charges, did he? A. There was no denial.

Q. You listened to the girl, and you believed her story, didn't you?

A. I listened to her story and it impressed me

(Testimony of Francis Krull.)

as being truthful to the extent that she had been seduced.

Q. The only doubt you had in your mind was whether it was rape or whether it was seduction?

A. Well, I did not have any doubt as to the rape charge.

Q. The girl was there all alone, was she not?

A. Yes, she was there. I don't think she was exactly alone. I cannot recall who was with her, but she was there, and she was brought in by the officers. I think the Department of Justice was [163] handling the matter.

Q. She had no relatives inside, had she?

A. I do not recall.

Q. At any rate, the little girl was sitting there with nobody with her?

A. She could not speak English, and we had quite a little time getting someone to interpret, and we finally called upon Mr. Grant, a bailiff of the court, who talked Spanish, and he came in and did the interpreting.

Mr. THACHER.—Her testimony was the only testimony taken in the matter?

A. That is all I have a record of.

Mr. HUTTON.—Q. That gentleman over there with his hand to his mouth was there, was he not (pointing to Mr. Shenick)?

A. Well, I would not state positively now, but there was someone that represented—

Q. (Interrupting.) Anybody there that looked like him? A. I would say yes.

(Testimony of Francis Krull.)

Q. Would you say it was him, or not?

A. I would not swear positively it was he.

Mr. THACHER.—Q. Was there any testimony taken in the whole matter, except the testimony of Miss Vargas?

A. That was all I heard.

Q. And that it was dismissed? A. Yes.

Mr. THACHER.—That is all.

Mr. HUTTON.—That is all. That is our case.

Mr. THACHER.—That is our case.

[Endorsed]: Filed Feb. 11, 1929. [164]

[Title of Court and Cause.]

DEPOSITION OF JOSE BLANCO REYES, FOR RESPONDENT.

BE IT REMEMBERED: That on Thursday, May, 31, 1928, pursuant to verbal stipulation of counsel, at the offices of Messrs. Thacher & Wright, Suite 305 Welch Building, 244 California Street, in the city and county of San Francisco, State of California. personally appeared before me, Francis Krull, a United States Commissioner for the Northern District of California, authorized to take acknowledgments of bail and affidavits, *et cetera*, JOSE BLANCO REYES, a witness called on behalf of the respondent.

Thomas A. Thacher, Esq., of Messrs. Thacher & Wright, appeared as proctor for the respondent and W. H. Hutton, Esq., appeared as proctor for the libelant, and the said witness having been by

me first duly cautioned and sworn to testify to the truth, the whole truth, and nothing but the truth in the cause aforesaid, did thereupon depose and say as is hereafter set forth.

(It is hereby stipulated and agreed by and between the proctors for the respective parties that the deposition of the above-named witness may be taken on behalf [165] of the respondent at the offices of Messrs. Thacher & Wright, Suite 305 Welch Building, 244 California Street, in the city and county of San Francisco, state of California, on Thursday, May 31, 1928, before Francis Krull, a United States Commissioner for the Northern District of California, and in shorthand by Ben D. Mulligan.

It is further stipulated that the depositions when written up, may be read in evidence by either party on the trial of the cause; that all questions as to the notice of the time and place of taking the same are waived, and that all objections as to the form of the questions are waived unless objected to at the time of taking such depositions and that all objections as to materiality, relevancy and competency of the testimony are reserved to all parties.

It is further stipulated that the reading over of the testimony to or by the witness and the signing thereof by him and are hereby expressly waived.) [166]

JOSE BLANCO REYES, called as a witness for the respondent, sworn:

Direct Examination.

Mr. THACHER.—Q. State your name?

A. Jose Blanco Reyes.

Q. Mr. Reyes, what is your occupation?

A. Second steward.

Q. How long has that been *you* occupation?

A. For this company, for the Panama Mail?

Q. Yes.

A. Three years now.

Q. Three years. On what boats?

A. I was on the "Columbia" and the "Ecuador."

Q. And what was your occupation before that?

A. I was second steward, chief steward.

Q. On what boats?

A. Different boats,—on the Pacific Mail.

Q. Well, how long were you with the Pacific Mail?

A. Over 11 years.

Q. Over 11 years with the Pacific Mail?

A. Yes.

Q. Have you been with any companies except the Pacific Mail and the Panama Mail during the last 11 years?

A. That is the two companies.

Q. Those are the two companies. And before that who were you employed with?

A. I was in the cafe,—the Castillian Cafe here in town.

Q. How long have you been going to sea?

(Deposition of Jose Blanco Reyes.)

A. I have been going to sea since 1905.

Q. Since 1905? A. Yes, sir.

Q. That Castillian Cafe is the cafe over here on Sutter Street?

A. Sutter Street, used to be, yes, sir.

Q. What other ships were you on? What other lines were you with? A. Army transports.

Q. Army transport service. A. Yes, sir.

Q. Where were you born? A. Manila.

Q. Born in Manila? A. Yes.

Q. And are you part Filipino?

A. Spanish and Filipino. My father is Spanish and my mother is half Filipino and [167] Spanish.

Q. And what language do you speak?

A. Spanish and Tagalog.

Q. What are your duties on board the "Ecuador," or were your duties on board the "Ecuador" in October of 1927?

A. It is my duties to take care of the ship being cleaned, the dining-room and the staterooms.

Q. And how many boys, about, work under you?

A. Under my care, you mean?

Q. Yes, sir.

A. There is about 44, something, boys.

Q. Forty-four? A. Yes.

Q. And how many of those were room stewards, how many of them were bath stewards and how many of them were bell-boys?

A. Well, on the main deck, that is, the saloon deck, two bell-boys and one bathroom steward and

(Deposition of Jose Blanco Reyes.)

6 room boys; and down in the lower deck it is 6 room boys and a bathroom-boy.

Q. And how about the dining-room?

A. Dining saloon is 6 boys on that.

Q. So there were about 20 of those boys?

A. More than that. I have a deck steward, I have the social hall-boy, I have the captain's boy, and I have the smoking-room boy and the two saloon watchmen and I have three messmen, two steerage waiters and the steerage steward.

Q. Do you remember a passenger on the October, 1927, voyage of the "Ecuador" by the name of Ernestina Vargas? A. I do.

Q. When did you first meet Ernestina Vargas?

A. The day we arrived in La Libertad.

Q. And what were the circumstances of your meeting her there?

A. The purser called me up and I sent the bell-boy to bring her to room 31. That is his duty.

Q. And did you talk to her at that time?

A. No, I didn't talk. The brother was talking to me. [168]

Q. What brother? I don't know if he is a brother.

Q. What brother?

A. There was three fellows came on with her.

Q. Some three fellows came on board with Ernestina? A. Yes, sir.

Q. At La Libertad? A. At La Libertad.

Q. And how often did you see, that you remember,

(Deposition of Jose Blanco Reyes.)

Ernestina, after that up to the time you arrived in San Francisco?

A. They were always on deck. They eat on deck most of the time, you know.

Q. Most of the time they were eating on deck?

A. Yes, sir.

Q. And that is where you saw them?

A. That is where I saw her. The deck steward report to me she was asking for meals on deck always. He reported to me. I told the chief steward and the chief steward told the deck steward to serve them. That is the chief steward's duty.

Q. Well, after they came aboard, just tell us when you talked to Ernestina during the voyage up to San Francisco?

A. I never talked to Ernestina at all; just pass there in the saloon and salute me; just say "Good-morning."

Q. At any time during the month of October, 1927, did you go into the room—stateroom 31, while Ernestina was in there?

A. No. I never seen her in the room.

Q. Did you at any time have any relations of any kind with Ernestina? A. No, sir.

When you arrived in San Franicsco did you meet Ernestina's brother?

A. He came on board, yes, sir.

Q. And what talk did you have with her brother?

A. The brother, he thanked me for Ernestina arriving well, for taking good care of her and he asked me if I can go to dinner that night, and I told him

(Deposition of Jose Blanco Reyes.)

I couldn't go because I was busy. We just arrived. The only thing, I can go, I said, I think I am not sure, but Tuesday or Wednesday,—that night. And I had dinner with them. At that time I met the mother-in-law. [169]

Q. What time?

A. (Interrupting.) That day, that dinner.

Q. First at the dinner. I was going to ask you when did you see Ernestina next?

A. That is the time. I invited them to take dinner.

Q. No. But when did you see Ernestina next after the day when you met her brother down at the ship? A. That is the day I went to dinner with them.

Q. That is right. And what time did you go to dinner? A. It was about 7:30 or 8 o'clock.

Q. Whereabouts?

A. On 4th Avenue, I think it is. Fourth Avenue or Street.

Q. And who was there?

A. The mother and the brothers and her sister-in-law, Mrs. Vargas, the brother's wife.

Q. The mother of whom?

A. Mother-in-law of Mr. Vargas.

Q. And what is her name?

A. What is that name?

Q. What is the name of the mother-in-law?

A. Mrs. Julian is her name.

Q. And how long were you at their house at that time having dinner?

(Deposition of Jose Blanco Reyes.)

A. I was there until about 10 o'clock.

Q. When did you see Ernestina next?

A. The next time?

Q. Yes.

A. The next time I returned my appreciation for them inviting me to have dinner with them; I invited them to have dinner with me.

Q. Where? A. To the Mandarin Cafe.

Q. When?

A. I think it was about Friday, the day before we sailed.

Q. And who came to dinner with you at the Mandarin Cafe at that time?

A. The brother and the wife and Ernestina.

Q. Was the mother there?

A. Mother-in-law. The mother went home at that time.

Q. When did you next see Ernestina or her brother? A. The next voyage again.

Q. The next voyage?

A. Yes; they called me up on the phone to have dinner with them and I couldn't go the same [170] day we arrived bacause I was busy at that time and I went there, I think it was about Tuesday.

Q. When was this?

A. I couldn't tell you. It was two months after. It is always about two months every trip we make.

Q. That was some time in December of 1927?

A. About that.

Q. And what did you say,—they called you up on the phone?

(Deposition of Jose Blanco Reyes.)

A. Yes, they called me up on the phone and invited me to dinner with them and I told them I couldn't go that day, that I will go sometime Tuesday or Wednesday and I say I have a pair of shoes for Mr. Vargas, and I told them I didn't have the parrot and I had a canary bird.

Q. Well, what is this about the parrot and the canary bird?

A. Mrs. Vargas asked me if I can bring her a parrot. She is crazy about parrots.

Q. That is the brother's wife?

A. The brother's wife.

Q. Did you bring a parrot?

A. No, I didn't bring a parrot.

Q. What did you bring? A. A canary bird.

Q. And where did you get the canary bird?

A. That is my own canary bird I have on board the ship.

Q. And what are these shoes you are speaking of?

A. Those are shoes—Mr. Vargas saw me wearing shoes the first trip I met him and he like that pair of shoes and asked me if I can bring him one pair like that and I tell him I would be glad to bring it and I brought them that trip and after that—

Q. Well, you brought him the pair of shoes, did you? A. Yes, sir.

Q. And where did you meet them at this time, this voyage that you speak of? A. This voyage?

Q. Yes. A. This time?

Q. Not this present voyage, but I mean this sec-

(Deposition of Jose Blanco Reyes.)

ond voyage, [171] when you brought him the shoes? Where did you go?

A. Right to the house I went.

Q. Where was this?

A. Right on 4th Avenue.

Q. Out on 4th Avenue? A. Yes, sir.

Q. And what happened there? I mean, did you have dinner with them? A. Yes, I have dinner.

Q. You have dinner with them? A. Yes.

Q. And who was there?

A. Mrs. Julian, the mother-in-law of Mr. Vargas, Mr. Vargas and Mrs. Vargas and Ernestina Vargas.

Q. Ernestina?

A. Yes, and that is all besides myself.

Q. And when was the next time you saw them?

A. The next time I saw them was the time I was arrested.

Q. When was that?

A. That was the time we was here,—they arrested me here on board the ship, which was Thursday or Wednesday, it was.

Q. Of what month? A. Last trip.

Q. You mean in March of 1928?

A. Yes, March.

Q. And those charges against you were dismissed, weren't they? A. Yes, dismissed.

Q. And what were the circumstances? Did you see Ernestina or her brother then?

A. Well, after the hearing I was dismissed and the next day they came down to the port steward's

(Deposition of Jose Blanco Reyes.)

office, Mr. Shinick, the port steward, and Mr. Shinick sent for me on board the ship to come to the office. When I came to the office, I didn't know who was the party, and he was there, Mr. Vargas, and Miss Ernestina and another gentleman.

Q. Who was the other gentleman?

A. I couldn't tell you. I think—I don't know what he looks like, that fellow.

Q. It wasn't Mr. Hutton here, was it?

A. No, not Mr. Hutton. The gentleman told me there, he said, "You owe this man here $15." I say, "I owe?" I say, "I don't owe," and Mr. Shinick, [172] the port steward, told me, "If you owe him give it to him," and I told him I refuse because he is collecting for me—for the two hats he gave me as a present. He gave me those two hats as a present for my wife and sister-in-law.

Q. And then what?

A. Then I give him the $15.

Q. You gave him the $15?

A. Yes, sir, to Mr. Vargas.

Q. You spoke about hats, Mr. Blanco, that he gave you. When did he give you any hats?

A. This Mr. Vargas.

Q. Ernestina's brother, was it, who gave you the hat?

A. Yes, that is before this trip, sailing day, he gave me the hat. He told me on sailing day he was going to make a hat for my wife.

Q. When was that?

A. The day I brought the shoes, because I didn't

(Deposition of Jose Blanco Reyes.)

want to charge him for the shoes and canary bird. He was going to make the hat as a present.

Q. When did he bring you the hats?

A. The sailing day.

Q. Sailing day on the second trip. A. Yes.

Q. That is along in March of 1928, was it?

A. Yes.

Q. Do you remember a girl named Angela on that trip of the "Ecuador" in October of 1927?

A. Yes; that is her room-mate.

Q. Whose room-mate? A. Ernestina's.

Q. What room? A. In 31, sir.

Q. How did Angela become—how was she put in stateroom 31?

A. Well, I will tell you. Angela Villacencia; this girl Angela, she came from Corinto and she was recommended from Father Higgins of Corinto.

Q. Recommended to whom?

A. The chief steward. She was steerage passenger. She wasn't a cabin passenger. Now, this Angela, when we arrived at La Libertad, was the only girl, she was along in the steerage, and the—

Q. Who else was there in the steerage?

A. Well, there is [173] a lot of Chinese in the steerage and she didn't have any room-mate there in the steerage and Mr. Henry, the chief steward, spoke to the purser about this girl—she better move into Room 31, and the purser, I think he did decide and he told me to move that girl and I told the steerage steward to move that girl in Room 31.

Q. This is Angela?

(Deposition of Jose Blanco Reyes.)

A. This is Angela. That is the day we arrived in La Libertad, when this Ernestina was on board, because she was only one girl, too; she was alone in the room and so we put together the two. That is all.

Q. When did Angela move into Ernestina's room?

A. That is the day—about the night of that day. That was in La Libertad.

Q. The night of the day you were in La Libertad?

A. Yes, sir, after dinner.

Q. After dinner of the day you were in La Libertad? A. Yes, sir.

Q. And how long did Angela stay in that Room 31? A. As far as San Francisco.

Q. That is to say, that was her Room, 31, along with Ernestina up to San Francisco? A. Yes.

Q. What language did your boys speak?

A. English and Spanish, sir.

Q. How many of them were Filipinos, of the boys you had?

A. There is a hundred per cent Filipinos.

Mr. THACHER.—All right. Take the witness.

Cross-examination.

Mr. HUTTON.—Q. How old are you Mr. Reyes?

A. Forty-five, sir.

Q. And how much do you weigh?

A. About 160, something like that.

Q. And you are married, are you? A. Yes.

Q. And how long have you been married?

A. Since 1912. [174]

(Deposition of Jose Blanco Reyes.)

Q. And you have three children?

A. Four children.

Q. How old are they?

A. The oldest boy is going to be 15.

Q. And what is the next one?

A. The second one is going to be 13.

Q. And the next?

A. The third is going to be 6; and the fourth is going to be two years,—two years and a half; around three years.

Q. Are they all boys?

A. All boys, yes, sir.

Q. Now, when Miss Vargas went on the "Ecuador" down at Acajutla or La Libertad,—wherever it was, you say there were two or three young fellows that came with her?

A. With Ernestina, yes, sir.

Q. One of them told you he was her brother, didn't he? A. One.

Q. And he asked you to take good care of her?

A. He was recommending to me to take care of her because I was second steward.

Q. He asked you to take good care of her, didn't he? A. Yes.

Q. And you said you would? A. Yes, sir.

Q. Now, you know Mrs. Julian, don't you?

A. Mrs. Julian, yes, sir.

Q. Do you know where she lives?

A. In Divisadero.

Q. Do you remember the number?

(Deposition of Jose Blanco Reyes.)

A. I don't remember now. I know the place. I have been there. She gave me the address.

Q. Is it 1049 or 1149?

A. 1149, something like that.

Q. Do you remember going out there since you came here this trip? A. I was there, yes.

Q. Have you been there more than once?

A. Once.

Q. Did you talk to anybody when you were there?

A. I was a guest there. There was some party —there was some people there. [175]

Q. Did you talk to Mrs. Julian?

A. Yes, I was talking to her.

Q. In the front room? A. Yes.

Q. Anybody else there besides you and she?

A. Yes.

Q. You had quite a long talk with her, didn't you? A. Yes, sir.

Q. How long were you there?

A. About 20 minutes, something like that.

Q. That was on the 21st of this month, wasn't it?

A. I couldn't remember; it was last week I was there.

Q. What? A. Last week I was there.

Q. About three days after you got in?

A. I couldn't remember—three days or two days.

Q. Now, do you remember telling Mrs. Julian on that occasion you were very sorry for what had happened to Ernestina?

(Deposition of Jose Blanco Reyes.)

A. What I said was I very sorry what happened, that they demand me for those things.

Q. Do you remember telling Mrs. Julian on that occasion that if you could get a divorce from your wife you would marry Ernestina, Miss Vargas?

A. No, never did tell that at all. Never said that.

Q. Do you remember telling Mrs. Julian on this occasion that you were willing to pay expenses that she went to, connected with the birth of the child?

A. No.

Q. Did you say that or not? A. No.

Q. You didn't say that?

A. No, I never say that.

Q. Did you tell Mrs. Julian on that occasion that if you could get a divorce from your wife you would marry Miss Vargas?

A. No. I told to Mrs. Julian,—I have had no relation at all to Miss Vargas at all and I was surprised that they make me arrested the last time, the last trip. I was sorry for what happened, that they demand those things [176] of me and that I am arrested.

Q. Do you remember telling Mrs. Julian on that occasion that you couldn't see how you could get a divorce from your wife because she never done anything to give you cause for a divorce? A. No.

Q. Did you tell her that?

A. No, sir; no, sir. I didn't tell her that.

Q. Did you tell Mrs. Julian on that occasion that

(Deposition of Jose Blanco Reyes.)

as soon as you got your money you would pay Miss Vargas' expenses?

A. No; never promised that at all.

Q. You didn't say anything like that?

A. Nothing.

Q. Did you tell her on that occasion that you were the father of that child that Miss Vargas was going to have? A. No.

Q. You did not? A. No.

Q. Well, why did you go out and see Mrs. Julian if you wasn't interested in Miss Vargas?

A. No. Mrs. Julian was calling me up and when she called me up that day she asked me if I delivered any of her mail from the "Columbia."

Q. Well, she didn't ask you to go out there, did she?

A. She invited me because she told me she was not in the same place she was before on Scott Street.

Q. What time of day did you go out there?

A. In the afternoon.

Q. Afternoon? A. Yes, sir.

Q. Do you remember about what time?

A. Well, it is about 4 o'clock, something like that, or 5.

Q. And you were there about half an hour talking to Mrs. Julian, weren't you?

A. About 20 minutes; about that.

Q. Now, do you remember the time when you were in the office [177] of the second steward?

A. Port steward?

(Deposition of Jose Blanco Reyes.)

Q. Port steward, I mean. Do you remember telling Miss Vargas and her brother day before out in the Post Office Building in Commissioner Krull's office, to come down the next day and you would try and fix it up?

A. No, I never told that to the Commissioner. The Commissioner said—

Mr. THACHER.—Never mind what the Commissioner said.

Mr. HUTTON.—Q. At any rate, it was stated in your presence and in the presence of Miss Vargas and her brother that if they could go down to the office of the company the next day you would try to fix it up? A. No, sir.

Q. It was not? A. No, sir.

Q. Anyway, they went down there the next day, didn't they, and there was the port steward and yourself in the port steward's office? A. Yes.

Q. And Miss Vargas was there? A. Yes.

Q. And her brother and another gentleman was there? A. They were there.

Q. That is correct, *it* it? A. Yes, sir.

Q. Do you remember saying on that occasion that you were very sorry for what had happened to Miss Vargas? A. No.

Q. And that you didn't have any money then but as soon as you came back you would then pay the expenses of her sickness? A. No.

Q. Did you say anything in substance like that?

A. No. He just came to collect the $15.

Q. That is all they came there for?

(Deposition of Jose Blanco Reyes.)

A. Yes. And they went out.

Q. The four of them were down there to get $15?

A. Three people.

Q. The three of them went down there to get the $15? A. Yes.

Q. That is all they went there for?

A. Yes, sir; that is [178] all the conversation I had right in front of the port steward.

Q. Do you remember Miss Vargas' brother going and asking you for a ring? A. Ring?

Q. A ring?

A. No. Miss Vargas had put in safekeeping in the purser's office her jewelry, and his family and him asked me to take Miss Vargas to the purser's office and give the jewelry to Miss Vargas. The purser did not speak Spanish. That is all, she had the jewelry.

Q. Do you remember having a ring that Miss Vargas took aboard the ship with her?

A. That is the jewelry she have in the purser's saving.

Q. What?

A. That is the jewelry she had in the purser's office.

Q. Do you remember her brother, on the day that the ship came in port, coming down to see you?

A. Yes.

Q. And asked you for a ring?

A. No. He didn't ask me for a ring. *I* asked me for her jewelry in the purser's office.

(Deposition of Jose Blanco Reyes.)

Q. Well, didn't you have the ring on your finger? A. No, sir. I wear her ring?

Q. Yes. And you say you never had that ring in your possession at all?

A. No, sir. The purser's office.

Q. Not at any time? A. Any time.

Q. Do you remember what time of day it was that the brother of Miss Vargas saw you on the day of the arrival of Miss Vargas in San Francisco?

A. It is about 11 or 12 o'clock; something like that.

Q. Well, he did call and speak to you?

A. No, sir. She introduced me to her brother and her sister-in-law.

Q. That is what I mean. The brother went to speak to you, talked to you?

A. They invited me that day to dinner. [179]

Q. Didn't he ask you for the ring?

A. No, he did not ask me for the *b*ring, the brother.

Q. He never spoke to you about the ring at all?

A. No, sir. That is Miss Vargas.

Q. Was Mr. Vargas' wife along with him at that time? A. She was.

Q. There were three of them there?

A. Yes, sir.

Q. And they never said anything to you about a ring? A. No, sir; didn't say anything.

Q. And didn't you give them a ring on that occasion?

(Deposition of Jose Blanco Reyes.)

A. I take her to the purser's office and get her jewelry, that is, Miss Vargas.

Q. Now, haven't you ever at any time told Miss Vargas you were sorry for what you had done to her? A. No.

Q. And you wanted—and you were going to marry her? A. No, sir.

Q. Now, didn't you on the morning of the 12th of October, 1927, tell Miss Vargas that you were going to take her up to the Captain and marry her just before the ship got into San Francisco?

A. No, sir.

Q. You didn't say that, either? A. No, sir.

Q. Didn't you ever at any time tell Miss Vargas that you were very sorry for what you had done for her and asked her to say nothing about it?

A. No, sir.

Q. You did not? Not at any time?

A. No, sir.

Q. So you now claim that you went up to Mrs. Julian's home for the purpose of telling her that you didn't know why they made these demands on you. Is that right? A. What is that?

Mr. HUTTON.—Repeat the question.

(Question read by reporter.)

A. That is what I told her; I was awful sorry to have them [180] tell things like that, to demand me. I never did things to her.

Q. Did you ask Mrs. Julian on that occasion where the girl was, where Miss Vargas was?

A. Works?

(Deposition of Jose Blanco Reyes.)

Q. Where she was at that time?

A. No, I didn't ask for her; didn't ask for her.

Q. Didn't you tell Mrs. Julian on that occasion that you went there to see Miss Vargas or to find out where she was because you wanted to see her?

A. No, I didn't tell her that.

Q. Now, didn't Mrs. Julian on that occasion tell you she did not know where she was, but she thought she was somewhere in San Francisco?

A. No.

Q. She did not?

Mr. THACHER.—Is she in San Francisco now, because if she is I think you might get your interrogatories answered. Is she? Is she in San Francisco?

Mr. HUTTON.—Well, she will be damned quick.

Mr. HUTTON.—Q. You say you didn't say that?

Mr. THACHER.—Just a minute. I would like to have the record show where Miss Vargas is.

Mr. HUTTON.—That has got nothing to do with the deposition.

Mr. THACHER.—That has got a whole lot to do with this case.

Mr. HUTTON.—That has nothing to do with the deposition.

Mr. THACHER.—Let me ask you a question. Is Miss Vargas in San Francisco?

Mr. HUTTON.—I am not a witness.

Mr. THACHER.—Well, I am asking you whether she is in San Francisco.

(Deposition of Jose Blanco Reyes.)

Mr. HUTTON.—And I refuse to answer anything because I am not a witness. [181]

Q. Now, didn't the port steward say to you on the occasion that Miss Vargas and her brother and her brother's wife were in the port steward's office that if you don't take care of that girl you can't work for the company any more? A. No.

Q. Didn't say that? A. Nothing.

Q. How long were you in that port steward's office?

A. It didn't take long. It is about 10 or 15 minutes. As soon as I give the money and went out.

Q. It didn't take 10 or 15 minutes to get the $15, did it? A. I always carry money.

Q. It didn't take that long to get the $15, did it?

A. No. That is the longest time I was there. I didn't stay long.

Q. Didn't Miss Vargas and her brother tell you when you were down in the port steward's office that the girl was going to have a child?

A. No; never say a word to me. The thing he told me is the $15 for the two hats, that I owe him $15. I was surprised that he collected from me, because the hats, it should be a present.

A. When you were in Commissioner Krull's office, didn't Mr. Vargas then say she was going to have a baby? A. What is that, sir?

(Question repeated by reporter.)

A. Well, I don't know anything about that. I told them I didn't know nothing about the baby.

(Deposition of Jose Blanco Reyes.)

That is what I told there. She went to Mr. Krull there. If she was the only one that talked.

Mr. THACHER.—That is wholly incompetent to interrogate this witness as to what Commissioner Krull said. You know better than that. It is incompetent, irrelevant and immaterial and you wouldn't dare ask such a question before the Court. [182]

Mr. HUTTON.—It is highly competent.

Mr. THACHER.—It is incompetent, and you wouldn't dare to ask that question in the court, before the Court.

Mr. HUTTON.—Oh, there is no question about that stuff. It is all twaddle.

Mr. THACHER.—Well, we are letting you go on with a lot of stuff that is incompetent here.

Mr. HUTTON.—Q. Didn't you tell Commissioner Krull at the time of the examination before him when you were arrested, that you went to Miss Vargas' room and rapped on the door and she got up and opened the door for you?

A. No. She is the one. She spoke that way.

Q. What?

A. She is the one that spoke that way.

Mr. HUTTON.—That is all. Just one further question.

Q. You are going out on the "Ecuador" again, are you? A. Yes, sir.

Redirect Examination.

Mr. THACHER.—Q. And Mr. Henry is going out on the "Ecuador," isn't he?

A. Yes, sir.

Mr. THACHER.—That is all.

(Depositions closed.) [183]

United States of America,
State and Northern District of California,
City and County of San Francisco,—ss.

I CERTIFY THAT, in pursuance of stipulation of counsel and on Thursday, May 31, 1928, before me, Francis Krull, a United States Commissioner, at the offices of Messrs. Thacher & Wright, Suite 305 Welch Building, 244 California Street, in the city and county of San Francisco, State of California, personally appeared Jose Blanco Reyes, a witness called on behalf of the respondent in the cause entitled in the caption hereof, and Thomas A. Thacher, Esq., representing Messrs. Thacher & Wright, appeared as proctor for the respondent, and W. H. Hutton, Esq., appeared as proctor for the libelant, and the said witness having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in said cause, deposed and said as appears by his deposition hereto annexed.

I further certify that the deposition was then and there taken down in shorthand notes by Ben D. Mulligan, and thereafter reduced to typewriting, and I further certify that by stipulation of the proctors for the respective parties, the reading over of the deposition to the witness and the signing thereof were expressly waived.

And I do further certify that I have retained the said deposition in my possession for the purpose of delivering the same with my own hands to the Clerk of the United States District Court for the Northern District of California, the court for which the same was taken.

And I do further certify that I am not of counsel, nor attorney for either of the parties in said deposition and caption named nor in any way interested in the event of the cause named in said caption. [184]

IN WITNESS WHEREOF, I have hereunto set my hand in my office aforesaid, this 16 day of Aug., 1928.

[Seal] FRANCIS KRULL,
United States Commissioner, Northern District of California, at San Francisco.

[Endorsed]: Filed Aug. 16, 1928. [185]

[Title of Court and Cause.]

DEPOSITION OF JOSE BLANCO REYES, FOR RESPONDENT (RECALLED—FURTHER CROSS-EXAMINATION.)

BE IT REMEMBERED: That on Wednesday, August 8, 1928, pursuant to Notice hereunto annexed, at the office of Francis Krull, United States Commissioner, in the United States Postoffice and Court-house Building, in the city and county of San Francisco, California, personally appeared before me, Francis Krull, a United States Commissioner for the Northern District of California, authorized

(Deposition of Jose Blanco Reyes.)

to take acknowledgments of bail and affidavits, etc., Jose Blanco Reyes, a witness recalled for further cross-examination.

H. W. Hutton, Esq., appeared as attorney for libelant, and T. A. Thacher, Esq., appeared as attorney for defendant, and the said witness, having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the cause aforesaid, did thereupon depose and say as is hereinafter set forth.

(It is hereby stipulated and agreed by and between the attorneys for the respective parties that the deposition of the above-named witness may be taken in shorthand by E. W. Lehner. [186]

(It is further stipulated that the deposition, when written up, may be read in evidence by either party on the trial of the cause; that all questions as to the notice of the time and place of taking the same are waived, and that all objections as to the form of the questions are waived unless objected to at the time of taking said deposition, and that all objections as to materiality, relevancy, and competency of the testimony are reserved to all parties.

(It is further stipulated that the reading over of the testimony to the witness and the signing thereof are hereby expressly waived.)

JOSE BLANCO REYES, recalled for further cross-examination, sworn.

Mr. HUTTON.—Q. Mr. Reyes, you just arrived in port last Saturday, didn't you?

(Deposition of Jose Blanco Reyes.)

A. Yes.

Q. On the "Ecuador"? A. Yes.

Q. Are you going out on her again? A. Yes.

Q. When does she leave? A. Saturday.

Q. Did you arrive in port on her during the month of March, 1928?

A. The last trip, you mean?

Q. No, two trips ago.

A. Well, I was here two trips ago.

Q. Do you remember coming in in March?

A. Yes.

Q. About March 14? A. Yes.

Q. You remember that, don't you? A. Yes.

Q. Where does that vessel dock?

A. At 46.

Q. Do you know Mrs. Vargas, that is, the wife of the brother of Ernestine Vargas? A. Yes.

Q. You met her a few times, did you?

A. At the house, yes.

Q. Did you see her down in the port steward's office on Pier 46?

A. Who do you mean, Mr. Vargas, or Mrs. Vargas?

Q. Mrs. Vargas. A. No. [187]

Q. I have not finished the question. Did you and Mrs. Vargas have a conversation in the port steward's office of the Panama Mail Steamship Company on Pier 46, in the city and county of San Francisco, the day after you arrived on the steamer "Ecuador" in March, 1928? A. No.

Q. You did not? A. No.

(Deposition of Jose Blanco Reyes.)

Q. Were you called by telephone from the port steward's office on the day after you arrived here on the "Ecuador" to come up to the port steward's office to see Mrs. Vargas?

A. No, I did not see her.

Q. Now, on the day after you arrived on the "Ecuador," in March, did Mrs. Vargas say to you that she had come down to see you because her sister-in-law told her for the first time that you had assaulted her on the "Ecuador" on a trip on which she was a passenger, and that she was in a family way? A. No.

Q. Did she say that to you?

A. No, I never talked to her.

Q. Did you, in response to that, say to her that you were afraid something of that kind might occur, and that when you were in Panama on that trip before you had been trying to find somebody to see if you could not get some medicine for Miss Vargas? A. I never said a word that way.

Q. Did you, at that time, say that you had looked for that person, but you were unable to find him?

A. No, I never spoke a word, at all, never mentioned that, at all.

Q. Did you at that time say to her that you thought the best thing for Miss Vargas to do was to have an operation? A. No, I never did.

Q. Did Mrs. Vargas, in response to that, say that an operation would be dangerous, and it must not be thought of? [188]

(Deposition of Jose Blanco Reyes.)

A. No, the whole trip I never spoke to Mrs. Vargas at all, never saw her at all.

Q. Did you then say to her that you would furnish the money for an operation, and try and find a doctor to perform an operation on Miss Vargas?

A. No, I never did.

Q. Did you then say to her that you had not the money just then, but you would get it?

A. No, I never said a word, at all, never saw Mrs. Vargas since I arrived that day. The only day I saw her was when I was arrested, and the next day Mr. Vargas and Miss Vargas and the gentleman came to the port steward's office and I was on board the steamer, and they sent for me, and they were collecting the $15 for the two hats which was supposed to be a present for my wife and sister-in-law.

Q. Did you then, at that time, at the port steward's office, at the time I have indicated, say to Mrs. Vargas that you would go out to their house the next night and tell them whether you had been successful in finding a doctor, or not?

A. No, I never saw him and his wife, I never spoke to her at all.

Q. Did Mrs. Vargas, then, at that time, the time I have indicated, say to you that she thought that the proper thing for you to do was to marry Miss Vargas? A. No, she never did.

Q. Did you then, on that occasion, say to her that you had some engagement, and you could not very well marry Miss Vargas?

(Deposition of Jose Blanco Reyes.)

A. No, I never spoke to Mrs. Vargas, I never saw her, at all.

Q. Did Mrs. Vargas thereupon ask you whether you were married?

A. She never mentioned that, at all, to me; they know I was married. [189]

Q. Did Mrs. Vargas then say to you, "Have you any family"?

A. They know that I was married.

Q. I asked you whether Mrs. Vargas said that to you on that occasion.

A. No, not on that occasion; that was at the house when they invited me to dinner.

Q. Did you, thereupon, on the occasion I have mentioned, in the port steward's office, say to Mrs. Vargas that you were married and had four children?

A. No, I never told her that, I never saw her on the dock, at all.

Q. Did you, on the next day, get a telephone communication from Mrs. Vargas down to the dock of the Panama Mail Steamship Company, and to the port steward's office, telling you not to come to their house that night?

A. No, they never said a word to me, they never called me up on the phone, at all. The only day I saw them was the time I was arrested and had the trial here.

Q. Do you remember the last time you were testifying in this case, that I asked you about the time

(Deposition of Jose Blanco Reyes.)

that you visited Mrs. Julian's residence, out on Divisadero Street?

A. Mrs. Julian called me up to know if I have some mail for her from British Columbia, and she says she moved in a new place on Divisadero now; that is the only occasion I have been there.

Q. You remember that occasion, don't you?

A. Well, that is the day she sent for me in the afternoon.

Q. You left the steamer to go out there, did you?

A. No, when I got through with my work.

Q. What time did you get through?

A. About a quarter past five, something like that.

Q. Then you went right out to Mrs. Julian's house on that occasion?

A. I was there at that house. [190]

Q. You remember my asking you about going to that house the last time you testified? A. Yes.

Q. You went there, didn't you?

A. Yes, I did answer you that.

Q. You had a conversation with Mrs. Julian at that time?

A. I was talking to her with some party there, in the front room.

Q. Didn't you talk to her in the front parlor, when there was not anybody there but you and her?

A. She was talking to me.

Q. Nobody there but you and her?

A. Another lady and a man.

Q. When? A. Over there in the front room.

(Deposition of Jose Blanco Reyes.)

Q. Did you say there were two other people there? A. Yes.

Q. Did you say to Mrs. Julian, on that occasion, that when this baby was born you hoped that it would be a girl? A. No.

Q. Because you already had four boys, and you wanted a girl?

A. I never did say such a word.

Q. You didn't say that?

A. The only thing I told her was, I was innocent, and didn't know anything why they demanded me that way; that is the only way I spoke to her.

Q. Who was demanding? A. Mrs. Vargas.

Q. When? A. At the time I was arrested.

Q. You went there before you were arrested.

A. I was there at the time I was arrested, after that.

Q. Didn't you go to Mrs. Julian's house before you were arrested?

A. Before I was arrested, no, I never did.

Q. You went there afterwards?

A. At Mr. and Mrs. Vargas' house, and she was there. [191]

Q. That is not what I am talking about. I am asking you about the visit that you made to Mrs. Julian's house.

A. Mrs. Julian's house, that is the only place on Divisadero, the new place, the day she called me up.

Q. Did you go there on the day you were arrested, or the day after?

A. No. This is the last trip. I was arrested be-

(Deposition of Jose Blanco Reyes.)

fore. This is going about six months, now, the time I was arrested.

Q. At any rate, you remember going, on a certain day, to Mrs. Julian's house, don't you?

A. That is the last trip.

Q. Whatever trip it was, you went there?

A. That is in Mrs. Julian's house, on Divisadero, at the time when she called me up on board of the ship to see if I had any mail.

Q. That was shortly before you were examined, before you testified, down at Mr. Thacher's office?

A. Yes.

Q. I asked you on the occasion did you then tell Mrs. Julian that you hoped this baby of Miss Vargas would be a girl, because you already had four boys, and you wanted a girl? A. No.

Q. You did not say that to Mrs. Julian?

A. No, I never spoke to her.

Q. Did you ask Mrs. Julian, on that occasion, where Miss Vargas was? A. No.

Q. Did you tell her you would like to wait for her and take her out on an automobile ride?

A. No, I never did.

Q. Did you tell her, Mrs. Julian, or Mrs. Vargas, any of the things that I have asked you, in substance, on the occasions I have mentioned?

A. No, I never spoke to them, at all.

Q. You never spoke to Mrs. Vargas?

A. I never mentioned anything like that.

Q. You didn't say that to her in substance, if you never spoke to her at all? A. No. [192]

(Deposition of Jose Blanco Reyes.)

Q. You remember being in this room, don't you, on one occasion, at the time you were arrested?

A. Yes, at the time when I was arrested.

Q. Was there anything said here about Miss Vargas and her brother going down to see you in the port steward's office the next day?

A. No, I never did say anything, at all. The next day they were there, and the port steward called me up to his office, sent for me, and when I saw Miss Vargas, and Mr. Vargas, and a gentleman there, he mentioned this gentleman, he said, "You owe this man $15," and I was surprised to hear that $15 I owed, and I said, no—the port steward said, "Yo owe him?" and I said, "No." He mentioned the two hats, and I said the two hats were supposed to be a present, on account he asked me to bring a pair of shoes and a parrot, I did not bring the parrot, I brought a canary bird and the shoes, and I didn't charge him at all, and the way Mr. Vargas told me, he was going to make the two hats for my wife and my sister-in-law a present, on account I brought the shoes and the canary bird without charge, and that is the reason I said I did not owe him, and the port steward said, "If you have two hats pay him," and I didn't refuse nothing, I paid it.

Q. There was not anything said about that $15 the day you were in this room, 217, of the Post Office and Court-House Building, at the time before Mr. Krull, was there?

A. He never spoke to me at all when I left.

(Deposition of Jose Blanco Reyes.)

Q. There was nothing said about the $15 then?

A. No, he just went there and collected it.

Q. Who came up here on that occasion?

A. I came here, myself, and afterward the port steward came to see if there was needed a bond for me. [193]

Q. Did you and the port steward come together on the day when Mr. Krull did some talking?

A. No, I was in that room arrested.

Q. When did the port steward come?

A. At the time they brought me here, the marshal, for the trial.

Q. That is when they brought you from the marshal's office down here, then the port steward came: Is that correct? A. Yes.

Q. Did the port steward do any talking on that occasion in this room, 217?

A. He only mentioned I should have an attorney for that case, and the port steward was saying he wanted to see what the hearing was.

Q. Was not anything said here in this room, at all, on that occasion, when Mr. Krull, and Mr. Hatfield, and the port steward, and you were here, about Miss Vargas coming down to the port steward's office the next day, or within a reasonable time, and seeing what could be done? A. No.

Q. Nothing said, at all, about that? A. No.

W. Now, on the next day, I think it was the next day, or, at any rate, when Miss Vargas went down to the port steward's office at Pier 46, in the city and county of San Francisco, with her brother

(Deposition of Jose Blanco Reyes.)

and another gentleman, did this occur? First, I will ask you was Mr. Shenick there—was the port steward there at the time these three people and you were there?

A. When they sent for me they were there, and the port steward.

Q. And they all three went down about the $15?

A. Yes. [194]

Q. I will ask you whether this occurred: Did Mr. Shenick then state, in your presence, and in the presence of these other three people, that you knew you could not continue in the employ of the company unless you took care of the trouble that you had occasioned that young lady, or did he say that in substance? A. No.

Q. He did not? A. He never did.

Q. Did he then turn to you and say that you knew that, don't you—in substance that you knew that you could not stay there unless you took care of that young lady, with the trouble you had occassioned her? A. No.

Q. Did he turn to you and say that?

A. No, he never did.

Q. Didn't you respond, yourself, that you knew that? A. No.

Q. Nothing of that kind occurred? A. No.

Q. Did Mr. Shenick, then, in the presence of you and these three people whom I have mentioned, say that you did not have any money then, but the steamer would be back on Friday, May 18, and that

(Deposition of Jose Blanco Reyes.)

this gentleman who was with Miss Vargas and her brother was to call him up? A. No.

Q. Did he say that in your presence? A. No.

Q. Did Mr. Shenick, then, on that occasion, say also to this gentleman who went down with Miss Vargas and her brother, "I want you to come here on that day, May 18, remember that, and Joe and I will meet you here, and Joe will give this lady some money for her to take care of herself"? A. No.

Q. He did not say that? A. No.

Q. Did he then, on that occasion, in the presence of you and the other three people, say, "Joe wants to do that, Joe must do the right thing; Joe, will you take care of this lady and the baby that is yours"? A. No. [195]

Q. He did not say that in your presence?

A. No.

Q. Did he say that in substance?

A. No, he never mentioned it, at all.

Mr. THACHER.—Q. Who is Joe?

A. That is me.

Mr. HUTTON.—Q. Did he say any of what I have mentioned?

A. No, he never mentioned a thing like that.

Q. Did you, in response to that, say, "Yes"?

A. No, I never did.

Q. Did he then say to you, "You will take care of the mother and baby"? A. No.

Q. Did you, in response to that, say yes?

A. No.

Q. Did he then say to them, the gentleman who

(Deposition of Jose Blanco Reyes.)

was there with Miss Vargas, and Miss Vargas, "You come back here on May 18 and I will see that Joe gives you some money for this young lady to take care of herself, and treat her sickness"?

A. No, he never mentioned that.

Q. Nothing of that kind occurred?

A. Just to get the $15 and then went away, that is all.

Q. That is all you talked of? A. Yes.

Q. You say, then, that you never said anything in this room, at all, or nobody said anything when you were here, at the time of your arrest, about anybody going down to the port steward's office of the Panama Mail Steamship Company on that day, or within a short time after that day that you were in here, in which some arrangement was to be made by which you were to take care of this baby when it came along? A. No.

Q. No conversation of that kind occurred, at all?

A. I never had any conversation with them, at all.

Q. In this room?

A. In this room, or even outside; as soon as they discharged me I went out.

Q. Did you think it strange, at all, that Miss Vargas and another gentleman went down there to see you and collect $15. A. I was surprised at it. [196]

Q. You were surprised?

A. Yes, because the two hats were presents; anybody would be surprised.

(Deposition of Jose Blanco Reyes.)

Q. Isn't it a fact that when you were down in the port steward's office with Miss Vargas and Mr. Vargas, and this other gentleman, that there was no conversation, at all, about $15 until after all the conversation about Miss Vargas and her forthcoming baby?

A. Nothing was said, never a word to me at all about the baby.

Q. Hadn't they been there some time, some few minutes, before there was any conversation, at all, about $15?

A. No, the time when I arrived there in the office this gentleman—Mr. Schenick told this gentleman, "This is Joe Blanco Reyes," he said, "the steward on the 'Ecuador,'" and this gentleman said, "You owe this man $15," and I said, "I don't know." And I said, "What about?" And they said, "Two hats." And I said, "The two hats were supposed to be a present, why are you going to charge me?" And I told them I gave shoes and a canary bird, and I didn't charge them, that was a present, and now they turn to me and they gave this present to my wife and sister-in-law, and now they charge me, and I was surprised, and I was still going to refuse, and I say I will give $15 if they force me to collect.

Q. That was the only thing that was said when you, and the port steward, and Miss Vargas, and Mr. Vargas, and the other gentleman were there?

A. Yes, in the office when I was there.

(Deposition of Jose Blanco Reyes.)

Q. And the only conversation had there at all was about the $15?

A. I didn't have any conversation, at all, other than that.

Mr. HUTTON.—That is all.

Redirect Examination.

Mr. THACHER.—Q. When you went out to see Mrs. Julian, after hearing from her about her mail, what voyage is that?

A. That was the last voyage.

Q. That was in May or June?

A. In May. [197]

United States of America,
State and Northern District of California,
City and County of San Francisco,—ss.

I certify that, in pursuance of notice hereunto annexed, on Wednesday, August 8, 1928, before me, Francis Krull, a United States Commissioner for the Northern District of California, at San Francisco, at my office, Room 217 in the United States Postoffice and Courthouse Building, in the city and county of San Francisco, State of California, personally appeared Jose Blanco Reyes, a witness recalled for further cross-examination in the cause entitled in the caption hereof; and H. W. Hutton, Esq., appeared as attorney for libelant, and T. A. Thacher, Esq., appeared as attorney for defendant, and the said witness, having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in said

cause, deposed and said as appears by his deposition hereto annexed.

I further certify that the deposition was then and there taken down in shorthand notes by E. W. Lehner, and thereafter reduced to typewriting; and I further certify that by stipulation of the proctors for the respective parties, the reading over of the deposition to the witness and the signing thereof were expressly waived.

And I do further certify that I have retained the said deposition in my possession for the purpose of delivering the same with my own hands to the Clerk of the United States District Court for the Northern District of California, the court for which the same was taken.

And I do further certify that I am not of counsel, nor attorney for either of the parties in said deposition and caption named, nor in any way interested in the event of [198] the cause named in the said caption.

IN WITNESS WHEREOF, I have hereunto set my hand in my office aforesaid this 16th day of Aug., 1928.

[Seal] FRANCIS KRULL,
United States Commissioner, Northern District of California, at San Francisco.

[Endorsed]: Filed Aug. 16, 1928. [199]

[Title of Court and Cause.]

NOTICE OF TAKING DEPOSITION OF JOSE BLANCO REYES.

The defendant above named and its proctors will please take notice, That the deposition of Jose Blanco, also known as Jose Blanco Reyes, will be taken *de bene esse,* further cross-examination, before Francis Krull, Esquire, United States Court Commissioner, at room 217 United States Post-office and Courthouse Building, in the city and county of San Francisco, State of California, on Wednesday, the 8th day of August, 1928, at the hour of two o'clock in the afternoon of that day, and continuing thereafter until said deposition is completed, at which time you are notified to appear and act as you may feel advised.

You are further notified, that the cause for the taking of said deposition is, that the said witness is bound on a voyage to sea.

H. W. HUTTON,
Proctor for Libelant. [200]

[Title of Court and Cause.]

DEPOSITIONS OF CURT ZASTROW AND RUSSELL W. HENRY, FOR RESPONDENT.

BE IT REMEMBERED: That on Thursday, May 31, 1928, pursuant to verbal stipulation of counsel, at the offices of Messrs. Thacher & Wright,

Suite 305, Welch Building, 244 *California, in* the city and county of San Francisco, State of California, personally appeared before me, Francis Krull, a United States Commissioner for the Northern District of California, authorized to take acknowledgments of bail and affidavits, *et cetera,* Curt Zastrow and Russell W. Henry, witnesses called on behalf of the respondent.

Thomas A. Thacher, Esq., of Messrs. Thacher & Wright, appeared as proctor for the respondent, and W. H. Hutton, Esq., appeared as proctor for the libelant, and the said witnesses having been by me first duly cautioned and sworn [201] to testify to the truth, the whole truth, and nothing but the truth in the cause aforesaid, did thereupon depose and say as is hereinafter set forth.

(It is hereby stipulated and agreed by and between the proctors for the respective parties that the depositions of the above-named witnesses may be taken on behalf of the respondent at the offices of Messrs. Thacher & Wright, Suite 305, Welch Building, 244 California Street, in the city and county of San Francisco, State of California, on *Thursday, 31,* 1928, before Francis Krull, a United States Commissioner for the Northern District of California, and in shorthand by Ben D. Mulligan.

(It is further stipulated that the depositions, when written up, may be read in evidence by either party on the trial of the cause; that all questions as to the notice of the time and place of taking the same are waived, and that all objections as to the form of the questions are waived unless objected

(Deposition of Curt Zastrow.)

to at the time of taking such depositions and that all objections as to materiality, relevancy and competency of the testimony are reserved to all parties.

(It is further stipulated that the reading over of the testimony to or by the witnesses and the signing thereof by them are hereby expressly waived.) [202]

DEPOSITION OF CURT ZASTROW, FOR RESPONDENT.

CURT ZASTROW, a witness called on behalf of the respondent, having been duly sworn, testified as follows:

Mr. THACHER.—Q. Captain, what is your name?

A. Curt Zastro.

Q. Captain, when do you next go to sea?

A. On the 23d of June.

Q. On the 23d of June?

A. On the 23d of June.

Q. What is your occupation?

A. Master mariner.

Q. How long have you had master's papers?

A. Eleven years.

Q. What runs have you been on?

A. The Panama run—as master?

Q. Well, at all? As an officer?

A. As an officer on the Panama run, the China run and the New York run.

(Deposition of Curt Zastrow.)

Q. How long have you been running down either to Panama direct or to New York via Panama?

A. Since 1907, off and on.

Q. Well, by "off and on" you mean the greater part of the time?

A. The greater part of the time.

Q. How much, if any, Spanish, do you know?

A. Just enough to get along with.

Q. Well, can you make yourself understood?

A. Yes.

Q. What was your occupation in October of 1927?

A. Master of the steamship "Ecuador."

Q. How long have you been master of the steamship "Ecuador"? A. Then, about 10 months.

Q. Did you have a man on board as one of your crew by the name of Blanco? A. I did.

Q. What was his occupation at the time, Captain?

A. Second steward. [203]

Q. How long have you had Blanco under you?

A. About a year now.

Q. What do you mean by "now"?

A. Up to the present date.

Q. And how long have you known him?

A. About 10 years.

Q. How much of that time has he been on vessels of which you were and are an officer?

A. Only on this last one that I remember clearly.

Q. How have you found him?

A. Very trustworthy, sober and reliable.

Q. What reputation has he had?

(Deposition of Curt Zastrow.)

A. A very good reputation.

Q. What complaints have been made against Blanco at any time on a ship of which you were an officer? A. None.

Q. When did your ship leave La Libertad? You can refer to this log and refresh your memory.

A. (Referring to log.) On October 10, 1927.

Q. When did she arrive in San Francisco?

A. On October 21st.

Q. What time did she leave La Libertad?

A. On October 10th, that evening.

Q. What time? A. 9:45 P. M.

Q. And after she left La Libertad, what was the next port she made? A. Acajutla.

Q. And when did she arrive at Acajutla?

A. At 3:38 A. M., October 11th.

Q. And how long was she in Acajutla?

A. Until 11:18 A. M.

Q. October 11th? A. The same day, yes.

Q. Do you happen to remember what day of the week October 1st was? A. October 21st?

Q. Yes. A. Friday.

Q. What day of the week was October 10th?

A. Monday. [204]

Q. And on Tuesday morning you arrived at Acajutla? A. Tuesday morning, yes, sir.

Q. What was your next port that you made?

A. San Jose.

Q. San Jose de Guatemala? A. Yes, sir.

Q. And when did you arrive at San Jose?

A. At 4:12 P. M., October 11th.

(Deposition of Curt Zastrow.)

Q. That is the same day that you left Acajutla?

A. The same day.

Q. And when did you leave San Jose?

A. 9:48 P. M. the same day.

Q. And what was your next port?

A. San Pedro.

Q. That is San Pedro, California, Captain?

A. Yes, sir.

Q. And when did you arrive in San Pedro, California? A. On October 19th, at 4:02 A. M.

Q. What was your weather up to 8 o'clock on October 12th? A. Fine weather.

Q. Up to 8 o'clock on the morning of October 12th? A. Smooth sea; fine weather.

Q. Is that what your log states? A. Yes, sir.

Mr. THACHER.—When do you claim, Mr. Hutton, that this assault was committed?

Mr. HUTTON.—It says in the libel.

Mr. THACHER.—It says "on or about" and I would like to know the time.

Mr. HUTTON.—What does it say, on or about what?

Mr. THACHER.—On or about the 12th day of October.

Mr. HUTTON.—It was the 12th, on or about the 12th of October.

Mr. THACHER.—Do you mean the 12th?

Mr. HUTTON.—That is what I understood, yes. [205]

Mr. THACHER.—I don't want it made the 5th or the 19th or something of that kind later on.

(Deposition of Curt Zastrow.)

Mr. HUTTON.—On or about; either that day, the day before or the day after.

Mr. THACHER.—Well, let me ask you this, Mr. Hutton. Do you mean it was in the morning?

Mr. HUTTON.—It says so, don't it?

Mr THACHER.—No, it says on or about, and it should be specific.

Mr. HUTTON.—You can demur to that. Does it say what time he entered the room?

Mr. THACHER.—On or about 6 A. M.

Mr. HUTTON.—It says that, don't it; that means on or about 6 A. M.

Mr. THACHER.—You don't mean after that?

Mr. HUTTON.—6 A. M., it says.

Mr. THACHER.—It says on or about.

Mr. HUTTON.—Well, that don't mean 9 o'clock and it don't mean 4 o'clock.

Mr. THACHER.—I just want it made specific. You mean on the 12th of October at or about 6 o'clock A. M.?

Mr. HUTTON.—Sure. That is the way I understand it, on or about 6 A. M. It don't mean 4 o'clock; it don't mean 5 o'clock, and it don't mean 8 o'clock.

Mr. THACHER.—Q. After you left La Libertad, Captain, or at any other time, was any complaint made against Blanco? A. None.

Q. State whether or not any complaint was made by any woman passenger that he had annoyed her, insulted her, or had done anything of which she could complain? [206]

(Deposition of Curt Zastrow.)

A. No complaint had been made.

Q. What would you have done—

Mr. HUTTON.—Well, now, that is objected to—

Mr. THACHER.—Wait until I finish the question.

Q. What would you have done had a complaint been made by a woman passenger that Blanco had attacked her? A. I would have put him in irons.

Q. And when would you have released him from irons? A. In San Francisco.

Q. Under what circumstances?

A. Turned him over to the Commissioners.

Q. That is, the United States Commissioner?

A. Yes, sir.

Q. Is there a bell in the staterooms?

A. There is a bell in every one of the staterooms.

Q. In this stateroom Number 31, where is the bell? A. On the bed.

Q. Is there more than one bell?

A. There is one on each bed there.

Q. One on each bed? A. Yes.

Q. When do the boys go on duty in the morning?

A. Six o'clock in the morning.

Q. How many of the boys go on duty?

A. About twenty.

Q. What are Blanco's duties?

A. Looking out for the comfort of the passengers and boss the boys; see that they keep their rooms and respective passenger quarters clean.

Q. Of your crew, who speaks Spanish on the boat?

(Deposition of Curt Zastrow.)

A. Practically all the waiters speak Spanish.

Q. The waiters are Filipinos?

A. They are Filipinos.

Q. They were on that voyage,—Filipino waiters?

A. Yes.

Q. What inspection do you make, Captain, in regard to the [207] rooms?

A. I see that the rooms are clean and everything is in order at 11 o'clock in the morning, at sea. The ship is inspected every 4 hours; the officer goes around after he comes on watch.

Q. You make daily inspections?

A. I make daily inspections.

Q. Who with?

A. With the doctor, the purser, chief steward and the second steward.

Q. When did you first hear of any complaint made against Blanco by any woman, in regard to that voyage? A. The last trip.

Q. What were the circumstances of your hearing of it?

A. I heard that Blanco was arrested, and the next day I found out what he was arrested for.

Q. By the "last trip," when did you come to port the last trip, I mean approximately?

A. We sailed from here on the 17th of March; that would be about the 12th.

Q. 12th of March?

A. Yes; that we arrived here.

Q. That is, some time between the 12th and the 17th of March you heard Blanco had been arrested?

(Deposition of Curt Zastrow.)

A. Yes.

Q. And that was the first time you heard of anything in this matter? A. Yes.

Q. When had you come in prior to that date, but after October? After the October voyage.

A. I came in on the 30th of December.

Q. 30th of December? A. Yes.

Q. And how long did you stay, that is, how long did the "Ecuador" stay?

A. Until the 6th of January.

Q. How many of your crew or officers speak Spanish? That is to say, Spanish sufficient to get along with? [208]

A. About 50 per cent of them.

Mr. THACHER.—That is all.

Cross-examination.

Mr. HUTTON.—Q. Where is Blanco now, Captain?

A. Right here.

Q. And where is the "Ecuador"? A. Pier 46.

Q. You are going out on her again?

A. I am not.

Q. Well, how long does she usually lay in port on a trip?

A. Until the following Saturday, if she is on schedule.

Q. She has been in port since the 18th now, hasn't she? A. Yes.

Q. Are you having some repairs done on this trip?

(Deposition of Curt Zastrow.)

A. I don't think I have to answer that.

Q. Are you having some repairs done on this trip?

A. I am off that ship this trip. I have been relieved.

Q. Well, do you know when the "Ecuador" is going out again?

A. Yes; she goes out Saturday.

Q. Of this week? A. Yes.

Q. Is Blanco going on her? A. Yes.

Q. He is still working on her?

A. He is still working on her.

Q. And he has made one trip since you heard of this complaint against him? A. Yes, he has.

Q. What is your nativity, Captain?

A. I was born in Germany.

Q. You have sailed on German ships, I suppose? You sailed on German ships first? A. I have.

Q. And when did you leave them to come over into English speaking ships? A. In 1904.

Q. Now, there are two beds in each of the rooms on the "Ecuador," aren't there? A. There are.

Q. And there is one on one side of the room and one on the [209] other? A. Yes.

Q. They are not one above the other, in bunk form? A. No.

Q. Did you carry many passengers, or did you on that trip coming up the coast?

A. Not so very many.

Mr. THACHER.—Well, just a minute. Do you mean on that trip, or do you mean generally?

(Deposition of Curt Zastrow.)

Mr. HUTTON.—I mean the trip that ended here on October 21, 1927.

Q. Do you remember how many you had on that ship? A. No.

Q. Do you carry passengers in the third-class section and also in the saloon and sec*tion*-class section, don't you? A. No.

Q. What?

A. We carry first-class and steerage.

Q. Oh, first-class and steerage,—no second-class?

A. No second-class.

Q. Have you no recollection how many you had, how many passengers you had on that trip in the steerage?

A. Yes, the steerage was full up, the male st*or*age.

Q. And the other one, the saloon wasn't full. Was that full up or not? A. I don't think it was.

Q. Now, how many waiters did you carry on that trip?

A. I don't remember exactly,—about 20.

Q. And they are all in the saloon part of the ship or do some of them take care of the steerage part?

A. There are about two waiters and the steerage steward in the steerage.

Q. Now, when the boys go on work at 6 o'clock in the morning, what was the first thing they would usually do? [210]

A. Get their cleaning gear and start in to clean.

Q. Well, would that be done in the saloon, or in the rooms or where?

(Deposition of Curt Zastrow.)

A. Around the saloon, and whichever rooms are empty they start right off the reel as soon as the rooms are empty.

Q. Passengers don't usually get up that early, do they? A. Why not?

Q. I don't know. I am just asking you whether they did. I didn't ask you why not. Do passengers get up as early as 6 o'clock in the morning?

A. They do.

Q. All of them? A. Not all of them.

Q. Some of them do. A. Some of them do.

Q. That is natural. Now, who cleans out the rooms the passengers occupy, that is, in the saloon?

A. The waiters.

Q. And do you know what time they start in doing that? A. The rooms?

Q. Yes.

A. As I said before, whenever the passengers are out of there.

Q. Well, I suppose that means, doesn't it, from 6 o'clock up to ten or eleven o'clock?

A. Exactly.

Q. Is each man assigned to so many rooms?

A. Yes.

Q. Or do they go and pick them out indiscriminatorily?

A. No. Each boy has his own rooms.

Q. And who assigns them to those rooms?

A. The chief steward and the second steward.

Q. And what time is your inspection?

A. Eleven o'clock.

Q. That is usual on all ships at sea, isn't it?

(Deposition of Curt Zastrow.)

A. Yes.

Q. And by 11 o'clock, then, the rooms are supposed to be ready for your inspection?

A. Yes. [211]

Q. So the rooms, then, are really cleaned up between 6 o'clock in the morning and 11 o'clock?

A. Yes, provided there is nobody in the room and the passenger isn't sick. I wouldn't inspect the room when the passengers are in their rooms.

Q. I know that. That goes without saying. Of course you wouldn't. You wouldn't go in a room if a woman was in bed. Now, what kind of locks do those rooms have, Yale locks or do they have flat keys?

A. No, I believe they are the Litz locks.

Q. What kind is that?

A. It is a European lock.

Q. Well, they are not Yale locks, are they?

A. No.

Q. Like an ordinary house door lock? A. Yes.

Q. And do they have a tag on them? A. Yes.

Q. What is the tag made of, wood or leather?

A. The tags are the same as you have in a hotel, a composition.

Q. Now, supposing one of the passengers has left the room and locked it, does that passenger have to go back to the room and let the boy in or has he got a pass-key?

A. I don't know whether the boys have a pass-key or not.

Q. Does anyone have a pass-key?

(Deposition of Curt Zastrow.)

A. I don't think so.

Q. Do you know? A. No.

Q. Well, supposing a passenger leaves one of the rooms, goes up on the upper deck, does the passenger have to go back and let somebody in, if the passenger locked it when they left the room? What do you think about that? A. (No answer.)

Q. You don't know, do you, Captain?

Mr. THACHER.—Are you asking him what he thinks? Ask him whether it is so or not, before you ask him what he thinks [212] about it.

The WITNESS.—Repeat that question, please?

(Question read.)

Mr. HUTTON.—Q. What do you know about it? Do you know anything about that?

A. No, I don't know anything about that.

Q. What?

A. I don't know anything about that.

Q. Did you call at Corrinto that trip?

A. I did.

Q. Where is Corrinto from La Libertad?

Mr. THACHER.—I thought it was La Libertad you were interested in, Mr. Hutton.

Mr. HUTTON.—It doesn't make any difference what I am interested in. I am interested in what I think I am interested in.

A. About 180 miles.

Mr. THACHER.—Well, as far as the libel is concerned, I think it should set out what is pertinent.

Mr. HUTTON.—Q. Now, about how far is San

(Deposition of Curt Zastrow.)

Jose from La Libertad, Captain—San Jose de Guatemala?

A. 110 miles.

Mr. THACHER.—You mean as the crow flies, Mr. Hutton?

Mr. HUTTON.—The way you sail?

A. 110 miles.

Q. How were you as to the cargo that trip, Captain? Did you get cargo in any ports besides La Libertad on that trip? A. I don't remember.

Q. What? A. I don't remember.

Q. You don't remember. When you left the coast of Central America it was all open sea sailing then up to the time you got into San Pedro, wasn't it?

A. It was.

Q. Now, when you were in those ports, such as La Libertad [213] and San Jose de Guatemala and those other ports down there, I suppose the crew is usually fairly busy, aren't they? A. Yes.

Q. Getting passengers at every port, as a rule?

A. Yes.

Q. And who assigns them to the rooms?

A. The purser.

Q. Anybody take them, show them to the room?

A. Yes the bell-boy.

Q. Have you got a bell-boy independent of the other boys? A. We have two.

Q. What do the bell-boys do? A. Answer bells.

Q. What? A. Answer the bells.

Q. Have you got an enunciator in the cabin?

A. Yes, sir.

(Deposition of Curt Zastrow.)

Q. What does the second steward have to do when in port? A. The same as at sea.

Q. Well, I mean in those ports where you are down on the Central American Coast, where you are receiving passengers. Does he have anything to do with the reception of the passengers?

A. He has got to look out for the comfort of the passengers. That means to say that he has got to see that everything in the stateroom is all right before the passenger goes in.

Q. And when they come up over the gangway, as a rule who receives them there?

A. The quartermaster.

Q. Who? A. The quartermaster.

Q. Have you any bell-boys or other boys there?

A. They are around the enunciator.

Q. What?

A. They are around the enunciator; and the enunciator is close to the gangway.

Q. I suppose the second steward assigns them to their stations, doesn't he,—either the steward of the second steward? [214] A. Yes.

Mr. HUTTON.—Well, I think that is all.

Mr. THACHER.—Q. Captain, where does the bell from Room 31 ring?

A. At the port side.

Q. At the enunciator?

A. At the enunciator, right opposite the purser's office.

Q. And what is this enunciator?

A. It shows the number of the room.

(Deposition of Curt Zastrow.)

Q. That is, it drops down a tag?

A. It rings a bell and it drops down.

Q. Drops down? A. Yes.

Q. And how long does it remain down?

A. Until it is pushed up again.

Q. That is, at the enunciator?

A. At the enunciator.

Q. In other words, you have to push up the enunciator before you can ring up the tag that has dropped down with the Number 31 on it?

A. Yes.

Q. Captain, when a room is locked from the outside and the passengers are up on deck, can the boys get in? A. I don't know.

Q. You don't know? A. I don't know.

Mr. THACHER.—That is all.

Mr. HUTTON.—Q. Where is Room 31 located?

A. On the port side, on the main deck.

Q. Well, does it open into a saloon?

A. Into a passageway.

Q. Well, is it on the same deck as the saloon?

A. Below that deck.

Q. What? A. It is below that deck.

Q. The saloon is higher than Room 31 or lower?

[215] A. Higher.

Q. Well, can you step out of Room 31 on to the open deck of the ship?

A. No, you can't; you cannot.

Q. Then one of the walls, I will call it, of Room 31 is the side of the ship; is that right?

A. That is right.

(Deposition of Curt Zastrow.)

Q. Well, if you want to get out of Room 31, what do you have to do? What do you have to go thru to get up on the deck of the ship?

A. You step out of the room into the passageway, walk along the passageway until you come to the companion-way and then walk up another flight of stairs to the saloon deck.

Q. Are there rooms higher up than Room 31?

A. Yes.

Q. How many tiers? A. One. And then above that you have your social hall and your smoking-room; above that you have the bridge and boat deck.

Q. Is there a gangway around the rooms on the deck above where Room 31 is? What I mean is, can you come around on the outside of these rooms?

A. No, you can't walk around on the outside of these rooms. You have to be on the inside.

Q. All the rooms, then, are up against the wall or side of the ship? A. On that deck, yes.

Q. I mean the deck above?

A. No. Those rooms are set in 18 inches.

A. They are set in?

A. Eighteen inches; above Room 31 you have a clear deck on the deck above stateroom 31.

Q. You say that is about 18 inches wide?

A. That is the next fleet of staterooms.

Q. Between the side of the ship and the stateroom?

A. Yes, the next one, the one higher up.

(Deposition of Curt Zastrow.)

Q. Well, then, there isn't any clear deck around the rooms [216] that are above Room 31?

A. There is a clear deck above that, yes.

Q. No. But I mean are there any rooms immediately above?

A. Above? There are no rooms immediately above. It is a deck above.

Q. Are there any other rooms on that deck?

A. Further aft.

Q. But not there? A. No.

Q. Well, how near the center of the ship is Room 31?

A. It is pretty well forward; about abreast of Number 2 hatch.

Q. Forward of 'midships?

A. Forward of 'midships.

Q. And how far forward of the saloon is it?

A. About 20 or 30 feet.

Q. How much? A. 20 or 30 feet.

Q. Forward of the engine-room, is it? A. Yes.

Q. Forward of the fire-room? A. Yes.

Q. Is it up near, close to where the steerage passengers were?

A. No. The steerage passengers are aft.

Mr. HUTTON.—I think that is all.

(Witness excused.) [217]

DEPOSITION OF RUSSELL W. HENRY, FOR RESPONDENT.

RUSSELL W. HENRY, called as a witness on behalf of the respondent, having been duly sworn, testified as follows:

Direct Examination.

Mr. THACHER.—Q. Mr. Henry, what is your occupation?

A. Chief steward of the steamer "Ecuador."

Q. And how long have you been chief steward of that vessel?

A. Altogether, or just on the "Ecuador"?

Q. On the "Ecuador"?

A. A little over four years.

Q. And how long have you been going to sea?

A. About twenty-eight years.

Q. And how long have you been on the run that takes you between here and Panama?

A. Well, I have been on that run off and on since 1912, but part of the time I was running out to the Orient and part of the time I was on the run out to India and then I would come back on this run.

Q. How many years would you say approximately you have been on that run?

A. On this run?

Q. The Panama run?

A. Probably about 8 years. That would be at different times, you know.

Q. I understand. And how much Spanish do you speak?

(Deposition of Russell W. Henry.)

A. Very little. I can speak enough, you know, to talk to people on the ship and find out their wants or complaints or anything like that, but to carry on a conversation, carry thru a conversation, I could not.

Q. But you can speak and talk generally to the Spanish passengers, can you? A. Oh, yes.

Q. You were on the "Ecuador" in October of 1927? A. Yes, sir.

Q. Do you know a man by the name of Jose Blanco? [218] A. Blanco Reyes.

Q. Is it Blanco Reyes?

A. I think he goes by that name. Blanco is all I know him by.

Q. And who is Blanco? A. Second steward.

Q. Second steward of what boat?

A. The "Ecuador."

Q. And how long have you had him under you as second steward?

A. I think he has been there about a year and a half.

Q. Have you ever had any trouble with him?

A. No, sir.

Q. What kind of a reputation has he had?

A. Very good, so far as I know. I have never heard any complaints about him.

Q. What are Blanco's duties?

A. He is to keep the boys working cleaning the rooms and runs the dining-room; sees that the boys give the passengers the service.

Q. He works under you, does he? A. Yes, sir.

(Deposition of Russell W. Henry.)

Q. And then who works under him?

A. All of the boys; the waiters, bath-boys, bell-boys.

Q. And about how many boys are there working under him in the saloon?

A. In the saloon and rooms, around about 20.

Q. And of them how many are bell-boys and how many of them are bath-boys?

A. Two bell-boys and two bath-boys.

Q. Well, he has 16 ordinary room stewards?

A. Yes, sir; room stewards and waiters.

Q. What nationality were the boys on this voyage of the "Ecuador" in October of 1927?

A. They were all Filipinos, with exception of one or two.

Q. And what language did they speak?

A. Spanish.

Q. And when do the boys go on duty, or when did they go on duty on that particular voyage of the "Ecuador" in October of 1927?

A. They always go on duty at 6 o'clock in the morning. [219]

Q. What happens at 6 o'clock in the morning?

A. Well, they go up and they scrub the floors, wash the paint work down, wipe the dust down, polish brass, and then they begin to get ready for breakfast.

Q. What time is breakfast? A. Eight o'clock in the morning.

Q. That is, for the passengers? A. Yes, sir.

Q. And what is the breakfast hour?

(Deposition of Russell W. Henry.)

A. Eight to nine.

Q. Where are the bells located in Room 31 of the "Ecuador"?

A. The enunciator to the bell for Room 31 is in the alleyway in front of the purser's office on the port side.

Q. And when the button is pressed in Room 31 what happens?

A. Well, if the bell-boys are on, they answer it. In the afternoon between 2 and 4 the boys take watch and watch, you know. At night the night watchman answers it.

Q. That is, at night,—between what times?

A. From 8 o'clock to 6 the next morning.

Q. When the bell is rung, where does the bell ring, at the enunciator?

A. In the enunciator in front of the purser's office.

Q. And what happens in the enunciator?

A. Well, there is a little click and a little number drops down.

Q. The number drops down? A. Yes, sir.

Q. And it stays down until what is done?

A. Until it is pushed up again.

Q. That is, at the enunciator it has to be pushed up? A. Yes.

Q. Do you remember Ernestine Vargas on that trip? A. I remember her, yes.

Q. When was it you first remember seeing her?

A. I remember [220] when she first came on at La Libertad.

(Deposition of Russell W. Henry.)

Q. And what were the circumstances of her coming on board the "Ecuador" at that time?

A. She came on with some other friends, young people.

Q. Yes.

A. (Continuing.) And she was put down in Room 31. I didn't speak to her or anything.

Q. And when did you see her after that?

A. I think the next morning at the breakfast table when she came down.

Q. And, generally, how much did you see of her during the voyage?

A. Well, I didn't see a great deal of her. I would see her probably at the table when she was in the dining-room. I would see her sitting in there and quite often I would see her, as I say, quite often up on deck, when she was eating up on deck. She didn't seem to be a very good sailor and she eat quite a bit up on deck.

Q. How do you happen to remember her in particular among the passengers?

A. Well, she was about the only one that didn't come down more regularly than what she did, and another reason was on account of that other girl being in with her.

Q. What other girl was that?

A. There was a steerage girl that got on in Corinto. She was alone down there in the steerage and we put her up in Stateroom 31 with this other girl so as not to be down amongst the Chinamen and steerage passengers.

(Deposition of Russell W. Henry.)

Q. That was what stateroom? A. 31.

Q. And when did you put her in the stateroom with Ernestina?

A. It was either the night we left La Libertad, or the next morning. I would say; I am not sure as to that.

Q. Well, do you remember the name of this other girl,—what her name was?

A. Angellina, or something that way. I [221] don't remember the other name. I think it was Angellina. I am not sure.

Q. Did you ever see the two girls together?

A. Yes, sir.

Q. How often did you see the two girls together?

A. I seen them up on deck sitting there and having lunch a number of times.

Q. How often would you see them up there having lunch together?

A. Well, probably two or three times, for it is only about an 8-days' run; but I know I seen them three or four times eating on deck.

Q. They used to go around together, did they?

A. Yes, sir; a number of times I would see them coming up from the room and going down to the room and they would be together.

Q. State whether or not you ever talked to Ernestina?

A. Not more than when I saw her sitting on deck I would ask them how they were getting along, whether they were getting enough to eat or such

(Deposition of Russell W. Henry.)

things like that; whether they were seasick; how they were feeling; but that was all.

Q. You did ask them that, did you?

A. Yes, sir.

Q. Would you say that you asked them that more than once? A. Yes, sir.

Q. How many times would you say?

A. At least three or four times.

Q. And what did they say when you asked them that? What would Ernestina say when you asked her how she was getting along and so forth?

A. They always seemed to be laughing and having a good time; said she was getting along all right. The only thing she said was she was feeling a little seasick and didn't want to go down to the dining-room at times.

Q. What was your custom with regard to leaving the dining-room [222] before the end of the meal time?

A. Well, as a rule I didn't go in the dining-room. I stay in the companion-way. When the people begin to get thru, when the meal is coming to an end, I sometimes walk into the dining-room and around and go up on deck and look around.

Q. What would you have to say about—if there was anybody up there that had not been down to the dining-room or saloon to eat?

A. Why, in that case the deck-boy gives them their food on deck and sees whether they wanted anything.

(Deposition of Russell W. Henry.)

Q. That is to say, if they don't feel particularly well they have their meals sent up on deck, do they?

A. Yes.

Q. How long did you say this other girl stayed in room or stateroom 31 with Ernestine?

A. Well, she was in there all the way to San Francisco here.

Q. All the way to San Francisco?

A. Yes. We put her in there the night we left La Libertad or the next morning. Now, I am not sure, but she was in the room the rest of the trip.

Mr. THACHER.—That is all.

Cross-examination.

Mr. HUTTON.—Q. Do you remember Miss Vargas speaking to you close to her room on the night she came aboard or the next night?

A. No, sir.

Q. You can't recall that? A. No, sir.

Q. Well, supposing she said she did talk to you, you wouldn't dispute that, would you?

A. I would say I don't remember it.

Q. You would say you don't remember it. That is as far as you would go? A. Yes, sir.

Mr. THACHER.—That would depend somewhat on what she said, wouldn't it?

A. (No answer.) [223]

Mr. HUTTON.—Q. How many rooms, saloon rooms, were there on the "Ecuador"?

A. Saloon rooms? You mean staterooms?

Q. Yes. A. There are 55.

(Deposition of Russell W. Henry.)

Q. That would be accommodations for 110 passengers?

A. No, 109. One of the rooms is a single room.

Q. Do you remember how many saloon passengers you had on that trip from La Libertad up?

A. No, I couldn't say unless we go back to the records.

Q. Did Miss Vargas ever tell you it made her seasick to go down below? A. Yes, sir.

Q. Did she stay most of her time in a deck chair?

A. I wouldn't say most of the time, but I have seen her a number of times up on deck, yes, sir.

Q. She had a deck chair, didn't she? A. Yes.

Q. You sell those on the ship, don't you?

A. Yes.

Q. Who has charge of that?

A. The little deck-boy.

Q. What kind of chairs are they,—wicker chairs? A. No; they are these folding chairs; most likely you have seen them on ships. It lays back like that (illustrating) and then there is a foot-rest coming up like this (illustrating), and then you can fold them up and set them up against the wall.

Q. You fold them up against the wall?

A. Yes.

Q. Have you any recollection as to the first time when you saw Miss Vargas sitting in one of those chairs?

A. No, I couldn't say the exact day, no.

Q. What time do the boys commence to clean the rooms, passenger rooms, the staterooms?

(Deposition of Russell W. Henry.)

A. They go on duty at 6 o'clock.

Q. They go on duty at 6 o'clock? A. Yes.

Q. And the first thing they do, I suppose, is clean up the [224] saloon, polish brass and scrub decks? A. Yes.

Q. And then they get breakfast ready, do they?

A. Most of the room boys have a table in the dining-room, too, you know.

Q. When do they commence cleaning the rooms up, after breakfast or before?

A. After breakfast. Some of them go down and if they see a room where the door is open they will go in and make it up before breakfast any time they get a chance to get their work ahead.

Q. But the regular time, I suppose, would be after breakfast? A. After breakfast, yes, sir.

Q. Who takes charge of that,—the second steward? A. Yes.

Q. Whereabouts is the second steward's room?

A. It is down in the service alleyway on the opposite side. You can't get thru that way. You have to come up thru the saloon, thru another door right in front of my office.

Q. Now, if you wanted to get to Room 31, how would you go to that? A. From where?

Q. Well, from what places of the ship?

A. I don't quite understand.

Q. Where would you have to walk thru to get to that room?

A. The dining-room, my room, the purser's room is right in the center of the ship on the saloon deck,

(Deposition of Russell W. Henry.)

as they call it. If you wanted to go to her room you would have to go down the main companion-way and then walk along forward to Room 31.

Q. The main companion-way, did that lead down to the dining saloon?

A. No; the dining saloon is on the saloon deck, as we call it, and her room was on the main deck. That is one deck below. [225]

Q. When you went down the companion-way what was the first place you struck?

A. Well, you hit the main deck right in front of the ladies' toilet, right in front of the ladies' toilet you hit the main deck.

Q. Were there any staterooms around there?

A. Yes; and there is 39, 38, 36 and up to 30. 30 was the forward room.

Q. And then as you go along the passageway are there staterooms on each side of that passage-way? A. No, sir.

Q. Only on the outside?

A. Yes; there is a bulkhead on the other.

Q. How far would you have to walk from the companion-way to get over to room 31?

A. There are 9 rooms there. I should judge about 80 or 90 feet. You see, there are 9 rooms there. 39 is right at the foot of the companion-way next to the ladies' toilet.

Q. Is stateroom 31 near the end of the passage-way? A. Yes, sir.

Q. Right at the end?

A. No, 30 is right at the end, then 31.

(Deposition of Russell W. Henry.)

Q. How do they get air in there,—thru a port-hole in the side of the ship?

A. No; right at the end of the alleyway there is a big ventilator that goes right up on the outside deck, you know, with a big head on it.

Q. How do they get light in there? Is there any port-hole there?

A. Yes. Oh, yes, there are port-holes in the alleyways.

Q. Port-holes thru the side of the room?

A. Yes, sir.

Q. Is that over one of the beds? A. Yes, sir.

Q. Who used to attend to those port-holes,—the passengers [226] or the boys?

A. The boys.

Q. That is, if the passengers wanted a port-hole open they would ask the boy to do it?

A. Ring the bell and get the boy to open or shut it, for they are big and heavy ports, you know.

Q. Well, now, what is the seating capacity of the dining saloon, Captain?

A. At that time we had 101 seats.

Q. 101 what?

A. 101 seats in the dining-room.

Q. That is, 101 sat down to dinner?

A. They could.

Q. Well, did you have 101 people on board at that time? A. Oh, no; no, sir.

Q. You can't remember how many you had on that trip?

A. No. I know that we weren't filled up that

(Deposition of Russell W. Henry.)

trip. That is why we put that steerage girl up there.

Q. That is why you put that girl up there, did you say?

Mr. HUTTON.—I think that is all.

Mr. THACHER.—Nothing further.

(Witness excused.) [227]

United States of America,
State and Northern District of California,
City and County of San Francisco,—ss.

I CERTIFY that, in pursuance of stipulation of counsel, on Thursday, May 31, 1928, before me, Francis Krull, a United States Commissioner, at the offices of Messrs. Thacher & Wright, Suite 305, Welch Building, 244 California Street, in the city and county of San Francisco, State of California, personally appeared Curt Zastrow and Russell W. Henry, witnesses called on behalf of the respondent in the cause entitled in the captions hereof, and Thomas A. Thacher, Esq., representing Messrs. Thacher & Wright, appeared as proctor for the respondent, and W. H. Hutton, Esq., appeared as proctor for the libelant, and the said witnesses having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in said cause, deposed and said as appears by the deposition hereto annexed.

I further certify that the depositions were then and there taken down in shorthand notes by Ben D. Mulligan, and thereafter reduced to typewriting,

and I further certify that by stipulation of the proctors for the respective parties, the reading over of the deposition to the witness and the signing thereof were expressly waived.

And I do further certify that I have retained the said deposition in my possession for the purpose of delivering the same with my own hands to the clerk of the United States District Court for the Northern District of California, the court for which the same was taken.

And I do further certify that I am not of counsel, nor [228] attorney for either of the parties in said deposition and caption named nor in any way interested in the event of the cause named in the said caption.

IN WITNESS WHEREOF, I have hereunto set my hand in my office aforesaid, this 16 day of Aug., 1928.

[Seal] FRANCIS KRULL,
United States Commissioner, Northern District of California, at San Francisco.

[Endorsed]: Filed Aug. 16, 1928. [229]

[Title of Court and Cause.]

ORDER FOR DECREE FOR LIBELANT.

H. W. HUTTON, Esq., for Libelant.
Messrs. THACHER & WRIGHT, for Defendant-Respondent.

It is ordered that libellant have judgment for ten thousand (10,000) dollars, with costs of suit.

Let plaintiff's counsel prepare decree accordingly.

December 15, 1928.

A. F. ST. SURE,
United States District Judge.

[Endorsed]: Filed Dec. 15, 1928. [230]

In the Southern Division of the District Court of the United States, in and for the Northern District of California.

IN ADMIRALTY—No. 19631-S.

ERNESTINE ISABELLE VARGAS,
Libellant,

vs.

PANAMA MAIL STEAMSHIP COMPANY,
Defendant.

DECREE.

The above cause having been brought on to be heard and submitted to the Court for decision, and the Court being fully advised, it is now ORDERED, ADJUDGED AND DECREED and this does ORDER, ADJUDGE AND DECREE, that for and by reason of the matters set forth in the pleadings and shown by the proofs herein, that libellant have and recover from the defendant the sum of ten thousand ($10,000.00) dollars, with interest thereon at the rate of seven per cent per annum from the date of this decree, together with

her costs to be taxed; all in lawful money of the United States of America.

Dated December 24th, 1928.

A. F. St. SURE,
Judge.

[Endorsed]: Entered in Vol. 23, Judg. and Decrees, at page 390. Filed Dec. 24, 1928. [231]

[Title of Court and Cause.]

NOTICE OF APPEAL.

To H. W. Hutton, Esq., Proctor for Ernestina Isabelle Vargas, the Libelant in the Above-entitled Action, and to the Clerk of the Above-entitled Court:

PLEASE TAKE NOTICE that the respondent above named hereby appeals from the final decree made and entered herein, to wit, signed by the Court on the 24th day of December, 1928, and filed on said date, to the next United States Court of Appeals for the Ninth Circuit, to be holden in and for said Circuit, at the city and county of San Francisco, in the Northern District of California.

THACHER & WRIGHT,
Proctors for Respondent and Appellant.

[Endorsed]: Service of the within notice of appeal and receipt of a copy is hereby admitted this 29 day of December, 1928.

H. W. HUTTON,
Proctor for Libellant.

Filed Dec. 29, 1928. [232]

[Title of Court and Cause.]

ASSIGNMENT OF ERRORS.

Now comes Panama Mail Steamship Company, a corporation, respondent and appellant herein, and says that in the record and proceedings in this cause and in the final decree, there is manifest error in the following particulars:

First. If the Court entered judgment on the ground of criminal assault or rape—and the Court making no findings in any opinion or by a decree, left it entirely uncertain what his grounds were—the Court erred because the facts show that there was neither rape or criminal assault committed on the S.S. "Ecuador."

Second. If the Court entered judgment on the ground of seduction—and the Court making no findings in any opinion or by a decree, left it entirely uncertain what his grounds were—the Court erred because the facts do not show seduction and the law does not allow recovery for seduction on the high seas against a corporation.

Third. If the Court entered judgment on the ground of bastardy, the Court erred because the law does not allow recovery for bastardy against a corporation. [233]

Fourth. The Court erred in not finding that no criminal assault or rape was committed on libelant on the S.S. "Ecuador."

Fifth. The Court erred in not finding that no

criminal assault or rape was committed on libelant by an employee of respondent.

Sixth. The Court erred in overruling the objection of respondent (as immaterial, irrelevant and incompetent) to the question to libelant:

Mr. HUTTON.—"Now, does the face of the baby resemble Blanco?"

Testimony in the affirmative was then admitted.

Seventh. The Court erred in the following particular:

Mr. Vargas testified that Mr. Shenick, a former port steward of the company, told him (Vargas) that Mr. Blanco told him (Schenick) that he (Blanco) would help in paying some of the expenses of Ernestina Vargas in connection with the expected baby.

The testimony was objected to as hearsay, and the Court ruled as follows:

The COURT.—Was Blanco there with him?

A. Yes, he was there.

The COURT.—All right, go ahead.

A long statement as to what Blanco said in regard to helping pay expenses of Miss Vargas was then admitted.

Eighth. The Court erred in the following particular:

Moises Amaral, translator, process server and collector testified that Schenick said that Blanco was not able to pay Ernestina Vargas money and take care of her, but that he would later. [234]

Respondent objected to the entire line of exami-

nation as not being within the issues and hence irrelevant.

The Court ruled as follows:

The COURT.—Q. Was Blanco present?

A. Yes.

Q. Hear everything that was said? A. Yes.

Mr. THACHER.—But the prosecution is not against Blanco, but against the company.

The COURT.—I understand. The objection is overruled.

Moises Amaral then testified as to what Mr. Schenick said that Mr. Blanco said that he, Blanco, would do.

Ninth. The Court erred in the following particular:

Mrs. Emma Julian, mother-in-law of Ralph Vargas, testified through an interpreter that after the suit was brought, Blanco told her that he was sorry for what happened and that he would help pay for the child and that if the child was a boy he should be named after him, but if a girl, she should be named after Ernestina and that he would get a divorce.

Respondent objected to all this testimony as irrelevant on the ground that it had nothing to do with any claim against the Panama Mail Company.

The Court overruled the objection.

The above testimony remained in the record.

Tenth. The Court erred in the following particular:

Mrs. Emma Julian under examination:

Mr. HUTTON.—Did Blanco on that occasion say

that he would get a divorce from his wife, but he had not any case for divorce against her?

Mr. THACHER.—I would like to object to that. Whatever that may be against Blanco, certainly it is not relevant against the Panama Mail.

The COURT.—Overruled. [235]

Mrs. Julian testified that Blanco so stated some months after the present suit was brought.

Eleven. The Court erred in admitting over objection that it was irrelevant, a written statement of the process server Amaral, dated March 16, 1928, as to what occurred on that day.

Twelfth. The Court erred in admitting any testimony as to alleged conversation of Blanco regarding a claim that Blanco offered to give Ernestina Vargas money for the child's support.

Thirteenth. The Court erred in the following particular:

Mr. Mallory, Assistant General Manager of the Panama Mail Steamship Company testified as to his familiarity with the S.S. "Ecuador" and with the construction of room No. 31 (where libelant was alleged to have been assaulted) and with the open screen between that room and the alleyway.

Mr. THACHER.—Q. What would be the effect of any unusual noise in Room 31?

A. It would be heard in the alleyway.

Mr. HUTTON.—I object to that on the ground it is calling for the opinion of the witness.

The COURT.—Sustained. I have not heard any testimony of any noise whatever.

The testimony was thereupon excluded.

Fourteenth. The Court erred in entering a decree against the Panama Mail Steamship Company in favor of the libelant, Ernestina Isabelle Vargas, in the sum of Ten Thousand (10,000.00) Dollars, together with interest and costs, or for any sum whatever.

Fifteenth. The Court erred in entering a judgment which was excessive in the amount of damages awarded. [236]

Sixteenth. The Court erred in directing the entry of any decree in favor of the libelant.

Seventeenth. The Court erred in not directing a decree to be entered in favor of respondent.

Eighteenth. The Court erred in that the order for final decree and the final decree are not warranted by the evidence and are erroneous.

THEREFORE said respondent and appellant prays that said decree be reversed and a decree dismissing the libel herein be made and entered and for such other relief as may be proper in the premises.

Dated: San Francisco, California, January 31, 1929.

THACHER & WRIGHT,
Proctors for Respondent and Appellant.

Copy of the within assignment of errors is hereby recd. this 31st day of January, 1929.

H. W. HUTTON,
Proctor for Libelant.

[Endorsed]: Filed Jan. 31, 1929. [237]

[Title of Court and Cause.]

STIPULATION AND ORDER RE ORIGINAL EXHIBITS ON APPEAL.

IT IS HEREBY STIPULATED AND AGREED by and between the respective parties hereto that all exhibits introduced in evidence upon the trial of the above-entitled cause in the District Court may be sent up in connection with the appeal prosecuted herein, as original exhibits to the Circuit Court of Appeals for the Ninth Circuit, instead of being copied in the apostles on appeal.

Dated January 4th, 1929.

H. W. HUTTON,
Proctor for Libelant.
THACHER & WRIGHT,
Proctors for Respondent.

It is so ordered.

A. F. ST. SURE,
United States District Judge.

[Endorsed]: Filed Jan. 4, 1929. [238]

CERTIFICATE OF CLERK U. S. DISTRICT COURT TO APOSTLES ON APPEAL.

I, Walter B. Maling, Clerk of the United States District Court for the Northern District of California, do hereby certify that the foregoing 238 pages, numbered from 1 to 238, inclusive, contain a full, true and correct transcript of the records

and proceedings, in the case of Ernestina Isabelle Vargas, Libelant, vs. Panama Mail Steamship Company, Respondent, No. 19,631, as the same now remain on file of record in this office.

I further certify that the cost for preparing and certifying the foregoing apostles on appeal is the sum of one hundred one dollars and fifty cents ($101.50), and that the same has been paid to me by the proctor for the appellant herein.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 25th day of February, A. D. 1929.

[Seal] WALTER B. MALING,
Clerk.

By C. M. Taylor,
Deputy Clerk. [239]

[Endorsed]: No. 5738. United States Circuit Court of Appeals for the Ninth Circuit. Panama Mail Steamship Company, a Corporation, Appellant, vs. Ernestina Isabelle Vargas, Appellee. Apostles on Appeal. Upon Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed February 25, 1929.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals for the Ninth Circuit.

IN ADMIRALTY—No. 5738.

PANAMA MAIL STEAMSHIP CO., a Corp.,
Appellant,

vs.

ERNESTINA I. VARGAS,
Appellee.

APPELLEE'S ASSIGNMENT OF ERRORS.

Appellee assigns the following errors existing in the decree of the lower court herein:

I.

The said lower Court erred in not awarding appellee a much larger sum than ten thousand ($10,000.00) dollars for the wrong she sustained, as that amount is not sufficient compensation for such wrong as shown by the evidence herein, and it would require a much larger sum than that to compensate her for such wrong, and the record herein also shows that appellant condoned the action of its second steward of the vessel "Ecuador," who committed the said wrong upon appellee by treating the same lightly, not insisting upon his prosecution for the crime he had committed, endeavoring to arrange for a compromise of appellee's wrong, and generally affording him aid and comfort after he had violated the chastity of the appellee against

her will, resistance and consent on board of appellant's vessel "Ecuador."

WHEREFORE appellee prays that the award of damages to her herein may be largely increased.

H. W. HUTTON,
Proctor for Appellee.

[Endorsed]: Filed Feb. 26, 1929. Paul P. O'Brien, Clerk.

No. 5738

United States

Circuit Court of Appeals

For the Ninth Circuit.

PANAMA MAIL STEAMSHIP COMPANY, a Corporation,

Appellant,

vs.

ERNESTINA ISABELLE VARGAS,

Appellee.

Apostles on Appeal.

Upon Appeal from the United States District Court for the Northern District of California, Southern Division.

PROCEEDINGS HAD IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

L

At a stated term, to wit, the October term, A. D. 1928, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the city and county of San Francisco, in the State of California, on Tuesday, the twenty-fifth day of June, in the year of our Lord one thousand nine hundred and twenty-nine. Present: Honorable FRANK H. RUDKIN, Circuit Judge, Presiding; Honorable FRANK S. DIETRICH, Circuit Judge; Honorable CURTIS D. WILBUR, Circuit Judge.

No. 5738.

[Title of Cause.]

ORDER OF SUBMISSION.

ORDERED appeal in above cause argued by Mr. Thomas A. Thacher, proctor for the appellant, and by Mr. H. W. Hutton, proctor for the appellee, and submitted to the Court for consideration and decision.

At a stated term, to wit, the October term, A. D. 1928, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the city and county of San Francisco, in the State of California, on Monday, the fifteenth day of July, in the year of our Lord one thousand nine hundred and twenty-

nine. Present: Honorable FRANK H. RUDKIN, Circuit Judge, Presiding; Honorable CURTIS D. WILBUR, Circuit Judge.

No. 5,738.

[Title of Cause.]

ORDER DIRECTING FILING OF OPINION AND FILING AND RECORDING OF DECREE.

By direction of the Honorable Frank H. Rudkin, Frank S. Dietrich and Curtis D. Wilbur, Circuit Judges, before whom the cause was heard, ORDERED that the typewritten opinion this day rendered by this court in above cause be forthwith filed by the Clerk and that a decree be filed and recorded in the minutes of this court in accordance with the opinion filed.

United States Circuit Court of Appeals Ninth Circuit.

No. 5738.

PANAMA MAIL STEAMSHIP CO.,
Appellant,

vs.

ERNESTINA ISABELLE VARGAS,
Appellee.

OPINION U. S. CIRCUIT COURT OF APPEALS.

Before: RUDKIN, DIETRICH and WILBUR, Circuit Judges.

RUDKIN, Circuit Judge.—This was a libel by a passenger to recover damages for a criminal assault by one of the officers of the ship. October 10, 1927, the libelant became a passenger on the steamship "Ecuador," bound from La Libertad for San Francisco, arriving in the latter port *of* October 21, 1927. The libel alleged that about six o'clock on the morning of October 12, 1927, the second steward of the vessel entered the stateroom of the libellant, when she was seasick and nauseated, and violently assaulted her, and against her will and consent, and against her resistance forcibly had sexual intercourse with her, by reason whereof she became pregnant with child. From a decree in the sum of $10,000 in favor of the libellant, the respondent has appealed.

The utmost that can be claimed by the appellant is that the adverse decree is based on conflicting testimony taken largely in open court. Only two witnesses, the appellee and the steward, gave direct testimony concerning the alleged assault. The testimony of the appellee fully supported the charge, and that of the steward denied it *in toto.* The appellant contends, however, that the testimony of the appellee should be rejected because she made no outcry at the time and did not complain of the outrage committed against her for a

period of some five months, or until she discovered that she was pregnant. A number of criminal cases have been cited in support of this view, but whatever the rule may be in such cases we think it is well settled that in civil cases no such strict rule obtains, and that the credibility of the complaining party is for the Court or jury, in view of all the surrounding circumstances. Dean vs. Raplee, 39 N. E. 952; Linville vs. Green, 102 S. W. 67; Schenk vs. Dunkelow, 37 N. W. 886; Kramar vs. Weigand, 135 N. W. 230; Jensen vs. Lawrence, 94 Wash. 148.

The court below, after hearing the testimony of the appellee, together with her reasons for not making an outcry and for not sooner complaining of the outrage, gave credence to her story, and it is not for us to say that the court erred in so doing. For if the case made by the appellee was not entirely free from suspicion, the defense itself was weak. The brief of the appellant practically concedes that the steward had sexual intercourse with this passenger, claiming that it was voluntary, but if no such concession was made, the overwhelming weight of the testimony clearly establishes the fact. And from that fact, two conclusions follow. First, that the chief witness for the appellant was guilty of false swearing, and, second, that the girl who occupied the stateroom with the appellee during the greater part of the voyage was not present when the outrage was committed. Without attempting to further review the details of the testimony, from which no good can result, we deem it sufficient to

say that this case belongs to that class where appellate courts refuse to review dicisions of trial courts based on conflicting testimony taken before them, unless the record discloses some plain error of fact, or unless there is a misapplication of some rule of law.

The appellee contends that the decree was less than it should have been, but we find no abuse of discretion in that regard.

The decree is affirmed, with interest from its date, and for costs in this court.

[Endorsed]: Opinion Filed Jul. 15, 1929. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 5738.

PANAMA MAIL STEAMSHIP COMPANY, a Corporation,

Appellant,

vs.

ERNESTINA ISABELLE VARGAS,

Appellee.

DECREE U. S. CIRCUIT COURT OF APPEALS.

Appeal from the District Court of the United States for the Northern District of California, Southern Division.

This cause came on to be heard on the Apostles

on Appeal from the District Court of the United States for the Northern District of California, Southern Division, and was duly submitted:

ON CONSIDERATION WHEREOF, it is now here ORDERED, ADJUDGED, and DECREED by this Court, that the decree of the said District Court in this cause be, and hereby is, affirmed with costs in favor of the appellee and against the appellant.

It is further ORDERED, ADJUDGED and DECREED by this Court, that the appellee recover against the appellant for her costs herein expended, and have execution therefor.

[Endorsed]: Decree Filed and Entered Jul. 15, 1929. Paul P. O'Brien, Clerk.

No. 5,738.

[Title of Court and Cause.]

ORDER STAYING ISSUANCE OF MANDATE.

Upon application of Messrs. Thacher & Jones, counsel for the appellant, and good cause therefore appearing, IT IS ORDERED that the issuance, under Rule 32, of the mandate of this Court in the above cause be, and hereby is stayed to and including September 15, 1929; and in the event the petition for a writ of certiorari to be made by the appellant herein be docketed in the Clerk's office of the Supreme Court of the United States on or before said date, then the mandate of this Court

is to be stayed until after the said Supreme Court passes upon the said petition.

CURTIS D. WILBUR,
United States Circuit Judge.

Dated: San Francisco, California, August 12, 1929.

[Endorsed]: Filed Aug. 12, 1929. Paul P. O'Brien, Clerk.

No. 5738.

[Title of Court and Cause.]

CERTIFICATE OF CLERK U. S. CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT TO RECORD CERTIFIED UNDER RULE 37 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES.

I, Paul P. O'Brien, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing three hundred one (301) pages, numbered from and including 1 to and including 301, to be a full, true and correct copy of the entire record, excluding original exhibits, of the above-entitled case in the said Circuit Court of Appeals, made pursuant to request of proctors for the appellant, and certified under Rule 38 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

ATTEST my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the city of San Francisco, in the State of California, this 19th day of August, A. D. 1929.

[Seal] PAUL P. O'BRIEN,
Clerk.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 21, 1929

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(557)

SEP 28 19
CHARLES ELMORE C

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1929

No. 425

PANAMA MAIL STEAMSHIP COMPANY (a corporation),
Petitioner,

vs.

ERNESTINA ISABELLE VARGAS,
Respondent.

PETITION FOR WRIT OF CERTIORARI
To the United States Circuit Court of Appeals
For the Ninth Circuit
and
BRIEF IN SUPPORT THEREOF.

THOMAS A. THACHER,
244 California Street, San Francisco,
Attorney for Petitioner.

THACHER & JONES,
HARRISON A. JONES,
W. KEVIN CASEY,
244 California Street, San Francisco,
Of Counsel.

SAN FRANCISCO

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Brief in Support of Petition for Writ of Certiorari

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I.

In this case where there are no findings and no opinion the court erroneously applies the principle that an upper court will not disturb, except for obvious error, the findings by a lower court made after hearing the testimony in open court. Such a decision is not merely, in our opinion, erroneous, but if established as the law it creates a situation most detrimental to the rights of litigants and the enforcement of justice in admiralty..... 9

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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1929

No.

PANAMA MAIL STEAMSHIP COMPANY (a corporation),
Petitioner,

vs.

ERNESTINA ISABELLE VARGAS,
Respondent.

PETITION FOR WRIT OF CERTIORARI
To the United States Circuit Court of Appeals For the Ninth Circuit.

To the Honorable William Howard Taft, Chief Justice of the United States, and to the Associate Justices of the Supreme Court of the United States:

The petition of Panama Mail Steamship Company respectfully shows to this honorable court as follows:

A. SUMMARY AND SHORT STATEMENT OF THE MATTER INVOLVED.

Ernestina I. Vargas seeks in this case to recover damages against the Panama Mail Steamship Company for an alleged criminal assault committed against her in October 1927 on the S. S. "Ecuador" by a steward named Jose Blanco. The action was brought in the District Court, for the Northern District of California, in Admiralty. The evidence introduced at the trial of the action consisted of testimony in open court, and also of various depositions, including the deposition of Jose Blanco. On December 15, 1928, the United States District Court, before which the matter was heard, ordered a decree for the libelant in the sum of ten thousand ($10,000) dollars and costs. In accordance with the order a final decree was entered on December 24, 1928. The United States District Court wrote no opinion and made no findings in the matter. An appeal was thereafter taken to the Circuit Court of Appeals for the Ninth Circuit, which court, on July 15, 1929, affirmed the judgment, refusing to review the decision of the District Court, on the ground that it was based on conflicting testimony.

B. THE DECISIONS BELOW.

The case was submitted on August 16, 1928. On December 15, 1928, the following order was entered:

> "It is ordered that the libelant have judgment for ten thousand ($10,000) dollars, with costs of suit.
>
> Let the plaintiff's counsel prepare decree accordingly."

On December 24, 1928, a final decree was entered. The Circuit Court of Appeals affirmed this judgment on July 15, 1929. The only part of the opinion of the Circuit Court of Appeals which is not purely formal reads as follows:

"The utmost that can be claimed by the appellant is that the adverse decree is based on conflicting testimony taken largely in open court. Only two witnesses, the appellee and the steward, gave direct testimony concerning the alleged assault. The testimony of the appellee fully supported the charge, and that of the steward denies it in toto. The appellant contends, however, that the testimony of the appellee should be rejected because she made no outcry at the time and did not complain of the outrage committed against her for a period of some five months, or until she discovered that she was pregnant. A number of criminal cases have been cited in support of this view, but whatever the rule may be in such cases we think it is well settled that in civil cases no such strict rule obtains, and that the credibility of the complaining party is for the court or jury, in view of all the surrounding circumstances. Deah v. Raples, 39 N. E. 952; Linville v. Green, 102 S. W. 67; Schenk v. Dunkelow, 37 N. W. 886; Kramer v. Weigand, 135 N. W. 230; Jensen v. Lawrence, 94 Wash. 148.

"The court below, after hearing the testimony of the appellee, together with her reasons for not making an outcry and for not sooner complaining of the outrage, gave credence to her story, and it it is not for us to say that the court erred in so doing. For if the case made by the appellee was not entirely free from suspicion, the defense itself was weak. The brief of the appellant practically concedes that the steward had sexual intercourse with this passenger, claiming that it was voluntary, but if no such concession was made, the overwhelming weight of the testimony clearly establishes the fact. And from that fact, two con-

clusions follow. First, that the chief witness for the appellant was guilty of false swearing, and, second, that the girl who occupied the stateroom with the appellee during the greater part of the voyage was not present when the outrage was committed. Without attempting to further review the details of the testimony, from which no good can result, we deem it sufficient to say that this case belongs to that class where appellate courts refuse to review decisions of trial courts based on conflicting testimony taken before them, unless the record discloses some plain error of fact, or unless there is a misapplication of some rule of law.

"The appellee contends that the decree was less than it should have been, but we find no abuse of discretion in that regard.

"The decree is affirmed, with interest from its date, and for costs in this court."

C. THE REASONS FOR GRANTING THE WRIT.

The bases on which a writ of certiorari is sought herein are as follows:

1. The effect in the Circuit Court of Appeals of a judgment in the District Court in Admiralty where no findings are made and no opinion is written, is of the utmost general importance. In the present case the Circuit Court of Appeals treats the mere entry of a decree without findings or opinion as the equivalent of a specific finding for the plaintiff on all the facts put at issue by the pleadings. This is a vast extension of the general rule that a finding of the District Court will not ordinarily be disturbed where it is based on conflicting evidence given by witnesses personally appearing in the court below. If the ruling of the Cir-

cuit Court of Appeals in the present case is correct and remains the law the greatest possible encouragement is given to the District Courts never to write any opinions and never to make any findings, and a situation is created which is certain to work the greatest hardship and injustice on litigants bringing actions in Admiralty in the United States District Courts.

2. The decision in the present case by the Circuit Court of Appeals for the Ninth Circuit is at variance with the decision of the Circuit Court of Appeals for the Second Circuit as expressed in the *City of New York,* 54 Fed. 181. The decision of the Circuit Court of Appeals held that the fact of the admitted failure of the plaintiff to make any outcry on the passenger steamer at the time she claimed she was assaulted, and of her admitted failure to complain to any one about the alleged attack for a period of some five months after the attack, would not affect the credibility of her evidence in the Circuit Court of Appeals. This holding is of general importance to all operators of steamship lines, and to all employers of any labor where there is any possibility that some person may later sue the employer on a claim based on attack by the working man.

3. The judgment is not sustained by the evidence introduced before the court, and in the opinion of petitioner the judgment would never have resulted had the record been carefully examined with a view to making careful findings to be entered by a court considering the matter *de novo.*

Ernestina I. Vargas was, at the time of the alleged attack, a native of San Salvador, 24 years old, and coming to San Francisco on the S. S. "Ecuador" owned and operated by the Panama Mail Steamship Company. She did not speak English. Jose Blanco was a half Spanish, half Filipino, steward. The libelant, Vargas, boarded the S. S. "Ecuador" on October 10, 1927, at 4 P. M., and the attack was alleged to have been committed about October 12th at about 6:30 A. M. Nothing was known by anyone connected with the Panama Mail Steamship Company, excepting this steward, about any claim of attack until March 15, 1928, when the libelant, Vargas, had Blanco arrested on a charge of rape. This charge was immediately dismissed by the United States Commissioner as being unsupported by the testimony given by Ernestina Vargas. When Blanco was arrested and immediately discharged the port steward of the Panama Mail Steamship Company was acquainted with the fact. Nothing was known about a claim against the Panama Mail Steamship Company until March 21, 1928, when Ernestina Vargas sued the Panama Mail Steamship Company for $50,000 on a libel based on this alleged attack. In her testimony given in open court the libelant, Vargas, stated briefly as follows:

She unlocked the door on the morning of the attack and very shortly afterwards in came Blanco. Blanco asked her if she would have any coffee, later took her hand and attacked her. She did not call out because it did not occur to her and because she did not know who would come to her aid. She also stated that on account of the early morning noises on board the vessel

she did not think it possible to be heard. After the attack she went to breakfast and said nothing to anybody. She never told anyone about the attack until some months after she arrived in San Francisco and learned that she was pregnant. Blanco wore her ring on his finger for some days during the voyage. When the vessel arrived in San Francisco she introduced Blanco to her brother and said that he had taken care of her ring for her. Blanco came to her brother's house and had dinner with her and her brother's family and later entertained her and her brother and her brother's family at a restaurant and at a theatre. Blanco took her and her relatives on two automobile rides. There were various exchanges of presents between Blanco and her brother's family. Later she learned that she was pregnant and about the same time learned that Blanco was married. She then had him arrested. The libelant's brother and sister-in-law testified regarding their entertainment of Blanco and Blanco's reciprocation of entertainment, including automobile rides for them and for the libelant, Ernestina Vargas. They also testified regarding various exchanges of different presents, including a canary bird, shoes, etc., between Blanco and the Vargas family. They also gave evidence of their learning of the condition of Ernestina Vargas and of the interview with Blanco at which it was discovered that he was married.

Blanco constantly denied that he ever had any relations with the libelant, Vargas, although he admits that he knew her and had become acquainted with her family after the ship arrived in port. Throughout the

record, there was considerable testimony produced by the libelant that Blanco was much interested in the child which the libelant was to have.

Wherefore, your petitioner prays that this honorable court will be pleased to grant a writ of certiorari in this case to the Circuit Court of Appeals for the Ninth Circuit to bring up this case to this honorable court for such proceedings as to this honorable court may seem just.

Dated, San Francisco,
September 23, 1929.

THOMAS A. THACHER,
Attorney for Petitioner.

THACHER & JONES,
HARRISON A. JONES,
W. KEVIN CASEY,
Of Counsel.

CERTIFICATE OF COUNSEL.

I hereby certify that the foregoing petition in my opinion is well founded and entitled to the favorable consideration of the court and that it is not filed for the purpose of delay.

Dated, San Francisco,
September 23, 1929.

THOMAS A. THACHER,
Attorney for Petitioner.

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1929

No.

PANAMA MAIL STEAMSHIP COMPANY (a corporation),
Petitioner,

vs.

ERNESTINA ISABELLE VARGAS,
Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

IN THIS CASE WHERE THERE ARE NO FINDINGS AND NO OPINION THE COURT ERRONEOUSLY APPLIES THE PRINCIPLE THAT AN UPPER COURT WILL NOT DISTURB, EXCEPT FOR OBVIOUS ERROR, THE FINDINGS BY A LOWER COURT MADE AFTER HEARING THE TESTIMONY IN OPEN COURT. SUCH A DECISION IS NOT MERELY, IN OUR OPINION, ERRONEOUS, BUT IF ESTABLISHED AS THE LAW IT CREATES A SITUATION MOST DETRIMENTAL TO THE RIGHTS OF LITIGANTS AND THE ENFORCEMENT OF JUSTICE IN ADMIRALTY.

From the earliest times the Federal Appellate Courts have recognized the principle that findings of

fact made by trial courts should not lightly be disturbed. This salutary principle was applied by District Courts in the consideration of the findings of Commissioners as well as to the findings of courts themselves.

The Albany, 48 Fed. 565;
Parsons on Shipping and Admiralty, 215;
The Providence, 98 Fed. 133.

It was dependent on the principle that a Commissioner or a judge was to be presumed correct if, having actually heard two witnesses give conflicting testimony he specifically upheld the testimony of one witness. This being the basis of the rule it did not apply to cases where the testimony was taken by deposition.

Lazarus v. Barber, 136 Fed. 534.

The rule was applied in the early days when the District Courts were the only Federal Courts of first instance, and the Supreme Court the only Appellate Court.

The Marcellus, 1 Black 414, 17 L. Ed. 217.

It was applied when the Circuit Courts were created and given jurisdiction over the District Courts, and it was adopted when, in 1891, the present Circuit Courts of Appeal were created and the appellate powers of the Circuit Courts abolished.

Literally hundreds of opinion have been written stating that

> "findings of fact by the District Court on conflicting evidence where the witnesses were examined in open court will not be reversed unless

manifestly contrary to the evidence." (*American & Eng. Enc.*, Vol. I, p. 1359.)

The Sampson, 4 Blatchf. 28;

Levy v. The Thomas Melville, 37 Fed. 271;

The Captain Weber, 89 Fed. 956.

As is the case with many general rules, the history and the meaning of this principle have sometimes been forgotten or misunderstood, and sometimes its language has been garbled. Like every such axiom, rightly applied it is productive of good law and sound justice, but carelessly applied or used to avoid the necessity of examining the facts of a case it can produce great injustice. If two witnesses appear before a District Court and give conflicting evidence a specific finding by the District Judge should be given great weight. But this does not mean that when a District Judge gives a decision in a case involving both facts and law, and does not state, or in any way indicate, the grounds he decides the case on, the upper court is to simply wash its hands of all responsibility by stating the case to have been one involving facts. That essentially is what the Circuit Court of Appeals did in the present case.

As will be later more fully commented on, there is nothing which indicates the basis of the opinion of the District Court. The woman claimed that she was assaulted on October 12, 1927. She admitted that she never called out when attacked and that she never complained to anyone until some four months after the attack. She admitted that she introduced this steward to her brother; that an acquaintance began between the steward and her brother's family with

whom she lived; that she and her brother's family dined with this steward on at least three occasions and were given automobile rides by him, and that numerous presents were exchanged between this alleged attacker and her own family. After it had been found out that Blanco was married and that the Vargas woman was pregnant she had him arrested. United States Commissioner Krull dismissed the charge with an entry in his official diary:

> "After a detailed and full hearing the evidence is not sufficient to warrant a holding on the charge of rape, and the case is accordingly dismissed and the defendant discharged for this particular offense." (Krull Rec. 203.)

Commissioner Krull testified that "United States Attorney suggested that the plaintiff might pursue her remedy in the state court." (Krull Rec. 202.) This testimony given by Miss Vargas before United States Commissioner Krull was introduced in full in the record. It was the only testimony which was taken at that hearing and was entirely uncontradicted. Yet Commissioner Krull testified that it did not make out a case of rape, refused to hold the steward Blanco, and suggested, as the place to obtain relief, the state court where cases of seduction and bastardy can be dealt with.

In the face of all this evidence the District Court did not make a finding or write an opinion, but simply ordered the Panama Mail Steamship Company to pay the woman $10,000. There is not the slightest suggestion in the record as to whether the District Court gave this woman $10,000 because it thought it

was a case of rape, or seduction, or because it thought a steamship company could be held to pay a passenger in a bastardy case involving a Filipino steward. It may well have had some theory that if a steward has relations with a passenger on board a vessel, the ship owners can be later held if a child results. There is no finding of fact of any character, and there is no conclusion of law. It would have been difficult, if not almost impossible, for a court to write a careful opinion in harmony with the law on the subject and which found that Blanco had actually attacked this woman, and found that, as a matter of law, the attack constituted rape, in view of the failure of the woman to make the utmost resistance, and her failure to complain to anybody regarding the incident for more than four months. Such a decision, if made by the District Court, would have been in absolute conflict with the decision of the United States Supreme Court in the case of *Mills v. United States,* 164 U. S. 644, 648, 649, where the court said, referring to the law of rape:

> "* * * though she object verbally, if she make no outcry and no resistance, she by her conduct consents, and the act is not rape in the man."

We do not think, and we cannot think, that the United States District Court, in the present case, is to be held by the Circuit Court of Appeals as, in fact, ignoring a decision such as that of the United States Supreme Court. The decision of the United States Supreme Court in the *Mills* case (supra) is in entire harmony with practically every other case dealing

with the law of rape. As the United States Supreme Court said in the *Mills* case (supra):

> "The crime itself is one of the most detestable and abominable that can be committed, yet a charge of that nature is also one which all judges have recognized as easy to be made and hard to be defended against; and it has been said that very great caution is requisite upon all trials for this crime, in order that the natural indignation of men which is aroused against the perpetrator of such an outrage upon a defenseless woman may not be misdirected, and the mere charge taken for proper proof of the crime on the part of the person on trial."

From the time of Blackstone the law has been:

> "If she concealed the injury for any considerable time after she had opportunity to complain; if the place where the act was alleged to be committed was where it was possible she might have been heard and she made no outcry; these and the like circumstances carry a strong but not conclusive presumption that her testimony is false or feigned." (*Blackstone*, Vol. 4, Sec. 212.)

As was said in *Lind v. Closs,* 88 Cal. 6, 13, a case involving a civil action for rape:

> " 'It has been several times held in this state, where the accused parties have been convicted of rape on the testimony of the complainant alone, and under circumstances tending to throw discredit upon her testimony, that the judgments should be reversed, the court saying that "a conviction upon such evidence would be a blot upon the jurisprudence of the country, and a libel upon jury trials," and that "the ends of justice demand that the cause shall be tried anew. * * *
>
> " 'We think these cases in point here, and that the ends of justice require that this case be tried anew.' "

As was said in *People v. Benson,* 6 Cal. 221, 223:

> "There is no class of prosecutions attended with so much danger, or which afford so ample an opportunity for the free play of malice and private vengeance."

As was said in *Oleson v. State,* 11 Neb. 276:

> "Nature had given her hands and feet with which she could kick and strike, teeth to bite, and a voice to cry out; all these should have been put in requisition in defense of her chastity."

In the present action the woman testified that after the attack she got up and went to breakfast without saying anything to anyone.

We do not think that this is a time to discuss in detail the various cases involving the law of rape. Such a discussion more properly belongs on a hearing of the action. What the petitioner does call attention to is the fact that the courts at every time have held that where the woman makes the greatest possible resistance including the weapon of calling out, the crime is not rape. And the courts have also held that the complaint is practically shown to be false if the woman, after the attack, does not complain to anyone. This does not mean that such a failure to complain is conclusive, but it does mean that such a failure is the strongest kind of evidence that the woman was not attacked and that her story was an afterthought designed for revenge, cupidity or for some other reason.

The court not having written any opinion or made any findings it is practically impossible to definitely point to the theory on which the court decided the

case. It was, however, manifest throughout the trial that whether or not Blanco was the father of the child was the question to which the court seemed to pay the greatest attention. From the assignment of errors it can be seen that the court again and again admitted testimony of witnesses for libelant stating that Blanco had stated that he (Blanco) would help pay a part of the expense of maintaining the child. A reading of the rulings of the District Court on the evidence indicates that the fatherhood of the child seemed to be the point on which the case was to be determined—as if the mere fact that Blanco was or was not the father of this child would determine the liability of the Panama Mail Steamship Company.

Yet, in spite of the fact that the cases and law dealing with rape would make it practically impossible for a judge to give any well considered opinion bringing within the scope of the word "rape" any acts of Blanco as testified to by the libelant, Ernestina Vargas, the Circuit Court of Appeals merely refused to concern itself with the application of the law of rape to the facts of the case and dismissed the action with the words "we deem it sufficient to say that this case belongs to that class where Appellate Courts refuse to review decisions of trial courts based on conflicting testimony taken before them, unless the record discloses some plain error of fact, or unless there is a misapplication of some rule of law." Parenthetically it may be again stated that the testimony of this man Blanco was not taken before the District Court, but was taken on deposition.

The decision in the District Court has nothing to do with the principle that findings of fact by the District Court on conflicting evidence will not be reversed unless manifestly contrary to the evidence. There was never a finding of fact and not a suggestion of a finding of fact.

The importance of this case is not merely the fact that this defendant has been penalized $10,000. That is relatively unimportant when the effect of such a decision is considered. A case is tried in which a Central American woman presumably has been imposed on by someone. We say that because she was the mother of an illegitimate child. She sues the employer of the man who is alleged to have done her a wrong. On her own story, if the law is carefully considered, no crime of rape has been committed. The employee concerned has been freed of all criminal responsibility after examination of the charge by the United States Commission. Yet the man is obviously guilty of rape in case the defendant in this action is liable. The court simply enters a judgment against the defendant for $10,000 without giving any reasons whatsoever.

The significance of the case lies in the necessary effect which will result if all such decisions rendered without opinions or findings are to be affirmed. Here, because there was no opinion and no findings, the court did not examine into the subject of whether there was sufficient evidence to support the findings. Because there were no conclusions of law the court did not consider whether conclusions were correct. It gives the District Court the benefit of every pos-

sible doubt, both of law and of fact, and because it saw that a question of fact might have been involved it took the ground that a question of fact was involved and was the basis of the opinion. Because it saw that a question of fact might have been a basis of the opinion the Circuit Court of Appeals refused to look into the matter any further. In other words, as the law is applied in this particular case, a District Court which makes no findings and writes no opinions in any case is in the strongest possible position before the Circuit Court of Appeals. The appellant is more or less helpless because he does not know the grounds the court had in mind. The court has made no misstatement because it has made no statement at all. The upper court takes the position that there is a possibility of a question of fact and therefore refused to hear the case further or to enter into any discussion of the law and facts. A state of law more disastrous to litigants before the United States District Court can hardly be imagined. A premium is being set by the Circuit Court of Appeals on a judge's action if he neither writes an opinion nor makes a finding. If any fact can possibly be brought into the case, or thought into the case, his judgment will be affirmed. But a court which applies itself to a case and definitely states the grounds on which it reaches its conclusion and writes an opinion and enters a judgment is in a far weaker state because if the reasons are incorrect the Circuit Court of Appeals will reverse the case. If a premium is placed, as it is placed, on the mere entry of judgments without opinions or findings another result is inevitable. The

entry of findings, and certainly the writing of a careful opinion insures the litigant careful consideration of his case. Anyone who is familiar with the record can tell from an opinion whether careful consideration has been given. If the upper courts are to welcome the entering of decisions with no findings and no opinions they are welcoming a situation which is certain to result in some courts giving very little consideration to many cases. In admiralty, due to the necessity of the case, a large amount of the testimony has to be taken on deposition. It is very laborious for any judge to examine depositions. Anyone familiar with admiralty matters knows it. It is not like listening to testimony in open court and deciding on what happens from hearing the testimony in open court. It seems absolutely essential for the protection of the rights of litigants in admiralty that no system be built up by which courts are encouraged, and indeed rewarded for entering judgments in which neither conclusions of fact or opinions are handed down. It cannot but result in an intolerable situation, destructive of the rights of litigants and making the path of the Supreme Court in dealing with admiralty cases most difficult.

II.

THE DECISION APPLYING THE GENERAL RULE REGARDING FINDINGS TO A DECISION WHERE THERE ARE NEITHER FINDINGS NOR AN OPINION IS IN CONFLICT WITH THE RULE OF THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

This question was brought up in the case of the *City of New York*, 54 Fed. 181. There the court held that although the opinion of the trial judge in an admiralty case will not be disturbed on appeal as to questions of fact depending on the credibility of witnesses examined in his presence unless there is a decided preponderance of evidence the other way, his decision rendered without an opinion cannot be reviewed conformably with that rule, and on appeal therefrom, the appellate court will decide such questions of fact as best it may on reading the record. In that case the Circuit Court of Appeals dealt with the question as to whether there is any application of the findings rule to a case where there is no opinion. The court decided in the negative and used the following language:

> "The learned district judge who heard this cause in the court below did not express any opinion in deciding it upon the facts or law of the case, and we are wholly uninformed of the reasons which led him to conclude that the libelants were entitled to recover. In controversies involving questions of negligence there is usually less difficulty in applying the rules of law to the facts than in ascertaining what the facts really are. In the present case the findings of the trial judge, in whose presence the important witnesses for the parties were examined, would have been most persuasive with this court in determining the facts, and probably would have been controlling, because the testimony is conflicting, and its

weight and force depends upon the credit to be given the witnesses. The demeanor of the witnesses is a material and important part of the evidence, which cannot be sent up with the record; and, because this is so, the rule prevails in appeals in admiralty that the opinion of the trial judge will not be disturbed upon questions of fact, depending upon the credibility of witnesses who were examined in his presence, unless there is a decided preponderance of evidence the other way. Under the present circumstances, we must decide all questions of fact depending upon the credibility of witnesses as best we may upon reading the record.

"It has been urged for the appellees that the decision of the district judge, without an opinion, is equivalent to the general verdict of a jury upon the issues of fact, and is necessarily a decision in favor of the libelants upon all litigated questions of fact necessary to a full recovery. We cannot for a moment assent to this proposition. How can a reviewing court know what question of fact entered into the decision until it is informed what the judge decided as matter of law? We can hardly suppose in this case that the learned judge regarded the steamship as an insurer of the safety of the injured tug; but if he did, in the view which we take of the law, his decision could not involve any finding upon the most essential facts of the case."

It is realized that it is a difficult task for any Circuit Court of Appeals to consider a case absolutely *de novo*. However, it is a no more difficult task than it is for the litigant who has a case decided against him where he has no knowledge as to the real ground on which the case was decided. The litigant is far better off in a trial before a jury because there, at least, the judge must give instructions. Where the court simply decides a civil action with no opinion and no

findings the court may be deciding it on a ground which is absolutely contrary to every conception of law. In spite of this fact, under the decision made by the Appellate Court in this case, regardless of the real ground for the decision of the judge, the Circuit Court of Appeals, if facts enter into the case at all, will affirm the judgment. The language by Wallace, C. J., in the *City of New York* (supra) states:

> "How can a reviewing court know what questions of fact entered into the decision until it is informed what the judge decided as matter of law."

In this particular case, if we are to judge from the rulings which the court made, the district court thought the question of liability turned to a large extent on whether or not this steward Blanco was the father of the child. As the assignments of error show, the court again and again admitted evidence of alleged statements by Blanco tending to show that he was interested in the welfare of the child. It is obvious that such evidence is not evidence which should properly result in the Panama Mail Steamship Company being held liable for rape. Yet this theory of the case, if we are to judge from the rulings referred to in the assignments of error, was exactly what was in the judge's mind.* How, then, is this Circuit Court of

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*As an instance of these rulings indicating the thought of the District Court:

"Mr. HUTTON. Did Blanco on that occasion say that he would get a divorce from his wife, that he had not any cause for divorce against her?

Mr. THACHER. I would like to object to that. Whatever that may be against Blanco certainly it is not relevant against the Panama Mail.

The COURT. Overruled." (Rec. p. 162.)

"Q. You gave him a pillow for a pair of shoes?

A. Yes." (Ralph Vargas, 112.)

"Q. Your wife asked him for a parrot?

A. My wife asked him for a parrot and he was going to bring it." (Ralph Vargas, 113.)

Appeals, or any appellate court, to state exactly the grounds on which this case was decided, and how can it reasonably refuse to examine the testimony taken in the court below.

III.

THE INJUSTICE WHICH THE APPLICATION OF THE FINDINGS RULE LEADS TO IN THE PRESENT CASE.

A great deal was said by libelant's attorney in the District Court and also in the Appellate Court regarding the hardship in which Miss Vargas was placed by the birth of an illegitimate child. We do not question the difficulties in which Ernestina Vargas, or any other unmarried mother, is placed, but that, in itself, is no reason why the Panama Mail Steamship Company should pay her $10,000.

Re-examining the evidence in writing this petition for writ of certiorari, it seems almost unbelievable that this was anything more than the squalid affair of a Central American native woman, of mature years, with this half Filipino steward. The woman did not call out, although the passengers all over the ship were getting up for breakfast, and although the testimony shows that there was a direct open screen over her door through which her voice would have carried right up an alley on both sides of which were state-

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He was thought to be a wealthy waiter.

"Q. Did he have an automobile?

A. Yes, two automobiles." (Ralph Vargas, 112.)

After the discovery that the libellant was pregnant, the following conversation took place:

"He (Blanco) said, 'I can't marry her now because I have a very important engagement.' I said, 'What can it be, are you married?' And he said 'Yes, I am married and I have some children.'" (Mildred Vargas, 143.)

rooms. She testified that she did not call out, first, because she did not think of it, second, because there was too much early morning noise going on aboard the ship (evidently the noise of the ship's employees busy making ready for breakfast and of passengers who had gotten up), and third, because she did not know who would come to her assistance. (As if any woman being criminally assaulted would care who came to her assistance as long as she was rescued.)† She stated that after the assault was over she went up and had breakfast. This in itself belies her excuse that she had been very seasick. She testified that this man Blanco wore her ring on his finger for many days during the voyage—as if a man who had attacked a woman and robbed her would walk around with the proof of robbery on his finger. She testified as to her introducing the man to her brother, and of the various entertainments which resulted from that introduction and in which she and her brother both participated.‡ Yet here, because no opinion was written, the Circuit Court of Appeals treats the lower court as having specifically found that criminal assault was first commit-

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†"I did not holler out because it did not occur to me." "Not knowing who would come to my aid, and my voice might not have been heard and on account of the noise that there is in the morning aboard ship, I did not think it was possible to be heard." (Vargas, 33, 34.)

"Q. What did you do when you got up?
A. I went to breakfast.
Q. Did you tell anyone about this?
A. No, I said nothing to anybody." (Vargas, 71.)

‡"Q. Did you present him to your brother?
A. Yes, I introduced him at that time and said he had taken care of the ring for me." (Vargas, 72.)

"Q. You asked him right afterward to dinner?
A. I asked him right afterward." (Ralph Vargas, 110.)
"Yes, we went to a theatre." (Vargas, 77.)

He was considered a suitor. Ralph Vargas said of his wife:

"A. Well, she said that fellow was bothering her and my wife told me that. She said that fellow, he wants to marry your sister." (Ralph Vargas, 115.)

ted on this woman, and then that after the occurrence, and after the arrival of the steamer in San Francisco, the criminal was freely entertained at affairs in which the woman assaulted participated. However sordid the society of Filipino waiters and the women with whom they consort may be, it seems unbelievable that even with them women freely associate with men who have assaulted them. However, this is to be said, if that were the case it would show the slight consequence an attack of the kind alleged made on a woman of this kind.

We do not believe that the District Court, having carefully reviewed the testimony in the case, and bearing in mind the various cases in point, made any such finding of fact. If he had made such a finding of fact, and if he had reconciled the opinion of the Supreme Court on the law on the subject of facts, we do not think he would have made the decision he did. We think that probably there was some theory in his mind about liability of vessels resulting from any acts of their employees. We doubt if he really meant to go so far as to take it that the Panama Mail Steamship Company would be held liable if Blanco was the father of the child—regardless of the circumstances of the relations of Blanco and the libellant. But we do not believe that he gave any great consideration to the cases defining the law of rape.* Here then, is this de-

*How inadvised the lower court was in regard to the law of rape was shown by the refusal of the court to allow the defendant to show that if the libellant had screamed she would have been heard:

"Mr. THACHER. What would be the effect of any unusual noise in room 31?

A. It would be heard in the alleway.

Mr. HUTTON. I object to that on the ground it is calling for the opinion of the witness.

The COURT. Sustained. I have not heard any testimony of any noise whatever." (Rec. p. 189.)

fendant, the Panama Mail Steamship Company, which is held liable without any findings and without any opinion by the court below, and for facts which convinced the United States Commissioner that the crime charged had never been committed. It was held liable in a case where the various cases dealing with rape cannot be reconciled with any holding that rape was committed in this case, and it is held liable without any opinion at all. On appeal the Appellate Court refused to examine the matter because it held that facts were involved and for that reason the decision of the lower court would not be interfered with. This is in the face of the fact that the decision of the lower court was nothing except an order to pay $10,000. It is hard to imagine a case which could arise in which the defendant would seem more entitled to an expression of opinion by either the trial court or the Appellate Court on the facts themselves, and where, if the defendant is to be held liable, the exact reasons for which he is held liable should be pointed out and the law reconciled with that of the elementary law on the subject.

IV.

THE OPINION OF THE CIRCUIT COURT OF APPEALS SHOWS THAT THAT COURT DID NOT GIVE ANY CAREFUL CONSIDERATION TO THE FACTS INVOLVED.

An examination of the two-page typewritten opinion filed in this case shows that the upper court, imbued with the theory that facts were involved, did not give any careful examination to the evidence. This can be seen by the language of the opinion. Aside

from the purely formal opening in the opinion the court states:

> "The utmost that can be claimed by the appellant is that the adverse decree is based on conflicting testimony taken largely in open court."

We fail to understand how any such theory can be advanced. As stated above, the woman testified herself that she did not call out. The evidence shows that there was assistance at every hand. Her testimony immediately opened up the question of law as to whether a woman who is attacked when there is assistance at every hand, but who, for her own reasons, saw fit not to call out, can be held to be criminally assaulted. The courts have uniformly held that it is the duty of the woman to use every means possible for defending herself, including her most effective weapon of screaming, and that if she does not resist to the maximum she has not been criminally assaulted. Upon the testimony of the Vargas woman alone the question is immediately opened up as to whether, under the cases, this could be considered in any respect a criminal assault. This question was never passed on. The facts as constituting rape in view of the cases presents an immediate question of law.

So far as conflicting testimony taken largely in open court is concerned, it must be remembered that the Vargas woman testified in open court, but that the steward Blanco testified on deposition. It cannot, in any sense, be viewed as a case where both witnesses testified in open court because they did not so testify.

But the opinion then goes on to state:

> "Only two witnesses, the appellee and the steward, gave direct testimony concerning the alleged

> assault. The testimony of the appellee fully supported the charge, and that of the steward denies it in toto. The appellant contends, however, that the testimony of the appellee should be rejected because she made no outcry at the time and did not complain of the outrage committed against her for a period of some five months, or until she discovered that she was pregnant."

We do not state that the testimony should be in all respects rejected because the woman admittedly made no outcry. But we do say that if the woman made no outcry when the evidence shows clearly that assistance was at hand, then the crime is not, under the decision of the United States Supreme Court, rape. Regarding her concealment of the alleged attack, that is another matter. We state that under the law, as we have already cited it, if a woman conceals an injury of this character for any considerable time such a circumstance is very strong evidence that her testimony is false, and this is the law of rape. The cases cited by the Circuit Court of Appeals in connection with the failure to call out we will deal with shortly. They do not in any way affect the law as the Supreme Court stated it in the *Mills* case (supra) and as it is generally recognized.

The Circuit Court of Appeals stated:

> "The court below, after hearing the testimony of the appellee, together with her reasons for not making an outcry and for not sooner complaining of the outrage, gave credence to her story, and it it not for us to say that the court erred in so doing."

This sentence refusing to consider the facts is in absolute harmony with the conclusion of the opinion in which it is stated:

"Without attempting to further review the details of the testimony, from which no good can result, we deem it sufficient to say that this case belongs to that class where appellate courts refuse to review decisions of trial courts based on conflicting testimony taken before them, unless the record discloses some plain error of fact, or unless there is a misapplication of some rule of law."

These two sentences show the clear basis of the opinion of the upper court. It thought that there were facts in the record and although the question submitted was largely a question of mixed law and facts the upper court refused to consider the matter because the lower court had made a decision. It was not that the lower court had entered a finding because there was no finding. It was merely because the lower court had decided the case at all that the upper court refused to even consider the facts although the questions presented were of mixed fact and law. Very clearly the upper court simply shut its mind after it made out that the basis of the claim was a charge of rape.

The opinion states:

"For if the case made by the appellee was not entirely free from suspicion, the defense itself was weak. The brief of the appellant practically concedes that the steward had sexual intercourse with this passenger, claiming that it was voluntary, but if no such concession was made, the overwhelming weight of the testimony clearly establishes the fact. And from that fact, two conclusions follow. First, that the chief witness for the appellant was guilty of false swearing, and, second, that the girl who occupied the stateroom with the appellee during the greater part of the voyage was not present when the outrage was committed."

The upper court misunderstood the brief of the petitioner if it thought there was any concession of the relations between the Vargas woman and this Filipino. We take the position now, and we have always taken the position, that we do not know anything about it. Oriental waiters are rather a low class, as anyone knows who has employed them. What Chinamen or Japanese or Filipinos do when they are not actually waiting on table or looking after a house is something which few employers know. Their idea of the relation of the sexes is as different from the American idea as is possible. They are an entirely different race of people. The fact that this Filipino waiter was ingratiating himself with the family of this libellant, Vargas, indicated that he had some motive, and an obvious motive would be possible relation with this woman, Ernestina Vargas. We think it probable that this Filipino waiter was giving these various presents to the libellant's family because of his concealed relations with this woman.* It is all a matter of surmise because both the woman and the waiter deny it. So far as our opinion of the libellant is concerned, and what she may have done, it is simply based on the fact that in our experience even semi-white women who consort with orientals are of a very low class. Throughout this case we consistently but unsuccessfully endeavored to point out to the District Court that the paternity of this child cannot be the turning point on which the case should be decided.

*Our suspicions were strongly supported when libellant Vargas testified to receiving from libellant in December, 1927—two months after the alleged attack—a card (introduced for identification) signed "Your loving Blanco" and beginning "It is Christmas. I wish you happiness sweetheart." (Rec. 49, Libelant's Exhibit No. 4 for identification.)

The only question is whether on the date in question this Filipino steward attacked this woman.

The conclusions which the Circuit Court of Appeals draws are proof that the case received very small consideration in the Appellate Court. The statement of the court that if the steward had relations with this passenger then the steward "was guilty of false swearing" is perfectly obvious. We do not deny that this steward is guilty of false swearing. The Panama Mail Steamship Company when sued, was, of course, absolutely in the hands of the two parties, the man Blanco and the woman Vargas. It had no other means to check up the story. An immediate investigation at the time of the offense would have shown definitely whether the woman was telling the truth or not. Because the woman waited for nearly five months the Panama Mail Steamship Company was largely in the hands of this Filipino steward Blanco. Blanco denied that he ever had anything to do with the woman at all, with the exception of the various entertainments after the ship arrived in port. He is a Filipino and from the testimony in this case we think that he lied to us. Anyone having experience with certain classes of these orientals knows that very rarely do they tell the truth. We do not condemn all Filipinos, but anyone who has lived on the West Coast, or had these Filipinos as household servants, knows that they are anything but truthful; that they tell all kinds of stories; that they are not honest like the Chinese, and that they have many faults. In spite of this fact they are frequently employed as servants on the West Coast by individuals in their homes and also by companies as

waiters, because it is difficult to obtain anyone else. We will freely admit that this witness probably did not tell the truth to us or to anyone else. But the fact that a Filipino waiter from whom little can be expected in the way of integrity happened to be the Panama Mail Steamship Company's only witness, cannot condemn the Panama Mail Steamship Company. In this connection it may be said that while Filipinos are very frequently liars and sneaks and thieves, it is very seldom that they commit, against white persons, crimes of any great violence such as murder or highway robbery or assault. They are a different class of people from the gangster type prevalent in certain cities.

The principal deduction made by the court is, however, that the paternity of the child by this waiter proved "that the girl who occupied the stateroom with the appellee during the greater part of the voyage was not present when the outrage was committed." Such a conclusion is, right on its face, not warranted.

We have not mentioned this girl, but the Panama Mail Steamship Company fortunately was able to locate another Central American woman who occupied the stateroom with Ernestina Vargas from the time when Ernestina Vargas came on board the steamer "Ecuador." This woman, who was subpoenaed, testified that she was there the entire time and that no such attack was ever committed on Ernestina Vargas. (Villavicencio 169.) This independent testimony showed that the story was made up of whole cloth and evidently fabricated, first, to punish Blanco when

he refused to support her child, and for vengeance, and second, as a means to attempt to get money out of the Panama Mail Steamship Company. This conclusion shows how little consideration the Panama Mail Steamship Company received in the upper court. The fact that Blanco was the father of the child was no proof that Blanco assaulted the woman. Certainly the birth of a child from an illegitimate union does not mean that the mother was assaulted, yet that is exactly what the Circuit Court of Appeals in effect holds. We call particular attention to it because it is all in line with what we believe, to wit, that the Panama Mail Steamship Company never, from any court, received any careful consideration in this case. Both courts seemed to be imbued with what the United States Supreme Court termed in the *Mills* case (supra) "the natural indignation of men which is aroused against the perpetrator of such an outrage," and have simply held the Panama Mail Steamship Company liable to pay the woman $10,000. The decision of the upper court and the lower court is just exactly of the type to be expected if the United States District Courts are encouraged, and in fact rewarded, for neither writing opinions or making findings, and after that has been done the upper court washes its hands of all responsibility by simply declaring that if any facts might have been involved then the decision of the lower court would be affirmed.

The cases cited by the Circuit Court of Appeals relative to the rule in civil cases regarding the necessity for calling out or for complaining are, in our opinion, of a kind entirely different from the case at

issue. They, of course, all concern cases which were brought against the actual perpetrator of tthe crime and none of them deal with cases where the employer is sued. Certain of the cases are not rape cases at all, but are merely assault and battery cases—a class of case which is naturally regarded as much less serious at law and which carries much less damages than an actual rape case.

In *Dean v. Raplee* (N. Y.), 39 N. E. 952, a 14-year-old child, an orphan, was taken into the house of the defendant under an arrangement by which he was to board, clothe and educate her. The young girl was totally inexperienced, threatened by this defendant to whom, as an orphan, she had been turned over, and was obviously, because of her "extreme youth, inexperience, and dependence united with the principle of fear and obedience," terrified of her custodian. The court laid great stress on the fact of her youth and on the fact that "consent or nonresistance on the part of a girl of that age was not to be understood in the same way as in the case of like acts committed upon a woman of more mature years." On a divided court, three to two, in which Judge Peckham, later Mr. Justice Peckham, of the United States Supreme Court, and Judge Edward T. Bartlett dissented, the judgment was upheld.

A case more different from the present action can hardly be imagined. In this case the woman was 24 years old, and far from being in the custody of the defendant, she was like any other passenger on board the ship, and she was a member of her brother's

family in San Francisco for months before she saw fit to mention the alleged attack.

In *Jensen v. Lawrence,* 94 Wash. 148, 162 Pac. 40, the court specifically charged:

> "You are instructed that if at the time of the alleged assault, or within a reasonable time thereafter, the plaintiff did not make an outcry, and that she did not do so as soon thereafter as opportunity offered itself, unless she was prevented from making such outcry by fear and threats, plaintiff would not be entitled to recover; * * * "

This instruction is the unquestioned law and it is the law which was not applied in the present case. The libelant, Vargas, did not make any outcry and she did not make any complaint for months. There was no fear connected with her case, since obviously this waiter was not in a position to harm her. If a sufficient reason for not making a complaint is that such complaint is always unpleasant to the party making it, then no such complaint need ever be made in a case of rape until the actual accusation is made.

In *Linville v. Green,* Mo. App., a $3000 judgment for assault and battery on a 19-year-old girl by a 45-year-old man was affirmed. The court, dealing with the question of the calling out by the woman stated that this was not necessary in the case under consideration because the attack was so far off that the woman could not be heard. Referring to the general law of the situation the court, in the course of its opinion, said:

> "In Robinson v. Musser, 78 Mo. 153, the woman, who sleeping in bed with a daughter of her alleged assailant, permitted him, while she was awake, to lift her from the bed and carry

her to another part of the house, without making any outcry. She said she did this because she thought it would create a great scandal, and she felt that she was mistress of the situation. Enough of an outcry to awaken the daughter would have saved her honor, and the Supreme Court very properly thought she was far too complacent and considerate for her own good. And in another case (Champagne v. Haney, 189 Mo. 709, 88 S. W. 92), the prosecuting witness permitted herself to be 'ravished' while people were awake in an adjoining house 90 feet away, who could easily have been alarmed had she screamed. In that case the Supreme Court would not permit the charge of rape to stand. But, where the encounter occurs in an isolated place, without any likelihood that an outcry, however vigorous, will bring relief, we do not perceive why a woman thus assailed should scream, though, perhaps, it would be a very natural thing for her to do. For practical purposes, she would better save her breath for the physical struggle."

In the case here under consideration there were probably 300 people, including the crew, within a distance of 500 feet of where this alleged attack was going on. One scream by the Vargas woman would undoubtedly have been heard over a great part of the ship and would have been immediately investigated. Furthermore, any such scream would have obviously terrified this steward in case he was making any attack. For a member of a crew to be found attacking a passenger on shipboard is punishable by years in the penitentiary, and for this waiter to have made an attack when anyone was apt to respond to the screams of the woman would have been unthinkable and the act of a clearly insane person. But the libelant, Vargas, stated that she did not call out because

she did not think of it and because she did not know just who would come to her assistance.

In *Kramer v. Weigand,* Mo., 135 N. W. 230, the court upheld a $5000 judgment for assault and battery on a woman. The facts are not entirely clear, but it appears that the plaintiff was living at the home of the defendant and did not tell anyone about the assault for several weeks. It seems purely an assault case under different circumstances.

Schenk v. Dunkelow, 37 N. W. 886, was an action in which a judgment for $1500 for trespass to the plaintiff's person which resulted in the birth of a child, was affirmed. The time of delay of the woman in making the complaint and the actual facts of the case do not appear.

It is submitted that these cases are cases which do not in any way change the law as set out in the *Mills* case (supra) or set out generally as applying to the law of rape. The fact remains that it is a charge most easy to make and very difficult to rebut. This applies with overwhelming force to the case of some person who is sued for an alleged criminal assault committed by his Filipino servant five months before. It becomes practically extraordinarily difficult for the defendant to disprove the charge. This is because the defendant personally has no actual knowledge and must largely depend on what such a Filipino steward chooses to tell him.

Had the Circuit Court of Appeals gone into the facts and law of the case as a case *de novo,* as, in our opinion it was incumbent on it to do, and had it not practically refused to consider the facts because of

the decision of the court below, we are convinced that the decision would have been entirely different.

V.

CONCLUSION.

We earnestly believe that this case should be considered by the United States Supreme Court. This belief is primarily due to our feeling that the decision of cases without opinions or findings by the United States District Court should not be rewarded or encouraged by the Circuit Courts of Appeal. Such a system would be an intolerable injustice on litigants and it would make the administration of fair justice very difficult. We believe that where no opinion is written and no findings are made then that the Circuit Court of Appeals should review the case *de novo* and, arduous though it may be, study the record and give its opinion on both facts and the law. Anything less is, in our opinion, giving litigants in the United States courts much less than that to which they are entitled.

In the present case we think that the Panama Mail Steamship Company received very little consideration and is entitled to a real examination of the facts and the law by some court. In view of the lack of any such examination manifested by an opinion, we believe United States Supreme Court should give it. Unless we are singularly prejudiced we think that the Panama Mail Steamship Company did not receive anything like its due consideration in the courts below.

No one questions the existence or the merits of the principle of Appellate Courts giving great weight to findings of fact made by the lower courts after consideration of testimony given before them. But this does not mean that such a principle should be twisted and given the effect which was given it in this case by the Circuit Court of Appeals for the Ninth Circuit.

Dated, San Francisco,
September 23, 1929.

Respectfully submitted,

THOMAS A. THACHER,
Attorney for Petitioner.

THACHER & JONES,
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W. KEVIN CASEY,
Of Counsel.

Due service and receipt of a copy of the within is hereby admitted

this _____ day of September, 1889.

_____

Attorney for Respondent.

FILE COPY

MAR 21
CHARLES ELMORE

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1929

No. 425

PANAMA MAIL STEAMSHIP COMPANY
(a corporation),
Petitioner,

vs.

ERNESTINA ISABELLE VARGAS,
Respondent.

BRIEF FOR PETITIONER.

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Respondent.

BRIEF FOR PETITIONER.

I.

INTRODUCTION.

This case represents an appeal by a steamship company from a judgment against it in an action brought by a woman passenger, a native of Salvador, for alleged criminal assault by a Filipino steward. The woman never spoke of the alleged assault to anyone until four months after she claimed it occurred, and between that time and the time of her complaint the

woman was, when his boat was in port, on obviously friendly terms with him. Then she learned that she was to have a child and that the steward was married. She first had the steward arrested on a charge of rape, and then, when this charge was immediately thrown out by the United States Commissioner, she sued the Panama Mail Steamship Company for $50,000.

The Panama Mail Steamship Company found itself in a peculiar position. Not knowing anything about the claim until over four months from the date of the alleged attack, the Steamship Company could not make any investigation immediately after the claimed crime and was therefore barred from obtaining evidence invaluable in such cases. The man concerned was a married Filipino steward whose obvious inclination was to protect himself and not the company and to deny any relationship between him and the woman—both because he might personally have to support the child and because of possible action by his own wife. The action was heard before a court, the rulings of which clearly indicate that not only the court was greatly influenced by the natural indignation which the mere making of the charge arouses in some men, but also the court completely confused the position of the man in an assault, seduction or bastardy case and the position of the Steamship Company in this case. Had the court worked out a carefully considered opinion treating of the law and facts it would at once have recognized its error, and have perceived that even under the woman's story this was no case of rape. The court, however, without

writing an opinion or making a finding, three months after the trial gave a judgment against the Steamship Company for $10,000. On appeal the Circuit Court of Appeals in a two-page opinion practically washed its hands of the case by declaring that it was a decision of facts in which the upper court would not interfere.

This squalid affair has at least one merit. It brings to the attention of the United States Supreme Court what gross miscarriage of justice can be brought about where a District Court writes no opinion and where the Circuit Court of Appeal, resting upon such lack of an opinion, treats the mere judgment as a finding against the defendant by the lower court from testimony given before it on every issue of facts raised by the pleadings.

II.

OPINION BELOW.

The opinion of the Circuit Court of Appeals is reported in 33 Fed. (2d) 894. It appears in the brief herein at page 29. No opinion was rendered by the District Court.

III.

JURISDICTION.

The jurisdiction of this court to issue a writ of certiorari and review the judgment is found in Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925, Chapter 229, 43 Stat. 938;

United States Code Annotated, Title 28 (Judicial Code and Judiciary) Section 347 (a). The date of the judgment sought to be reviewed is July 15, 1929, judgment having been entered by the Circuit Court of Appeals for the Ninth Circuit on that date, affirming a judgment of the United States District Court for the Northern District of California, in favor of Ernestina Isabelle Vargas, respondent, and against Panama Mail Steamship Company, petitioner. (Record, p. 299.) Panama Mail Steamship Company filed its petition for writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit and brief in support thereof in this court on September 28, 1929, and said cause was, on said date, docketed by the clerk of this court as No. 425, October term, 1929. A writ of certiorari to the Circuit Court of Appeals for the Ninth Circuit was granted by this court on October 21, 1929, 50 Sup. Ct. Rep. 40; 74 L. Ed. 43. The case, as will be hereinafter more fully shown, is one arising under the admiralty jurisdiction, the libel being *in personam* against a vessel owner for alleged criminal assault by an employee of the latter against a passenger on the high seas. (Record, p. 5.)

IV.

STATEMENT OF THE CASE.

An understanding of the case is best had from examination of the testimony of the three principal witnesses. These three witnesses were Ernestina Vargas, the woman involved and who was seeking to recover $50,000 from the Steamship Company, Jose

Blanco, the steward, who was quite obviously trying, primarily, to protect himself from any and all claims, and Angela Villavicencio. Angela Villavicencio was an absolutely independent witness. She was located in San Francisco, came under subpoena, and gave testimony unshaken in any particular. She occupied the second berth in Room No. 31, was there at the time when the claimed attack was alleged to have taken place and testified that nothing of the kind happened. The other witnesses were of minor importance. The libelant, Vargas, was the only witness who testified to the attack. Her brother, sister-in-law, and her brother's mother-in-law, were put on to testify that Blanco, who admittedly was most attentive to the Vargas family after the ship arrived in San Francisco, later displayed an interest in the child expected by Miss Vargas. Various witnesses for the vessel proved by testimony of records and otherwise that Angela Villavicencio occupied the second berth in Room No. 31 at the time in question. But the three principal witnesses were as stated.

The libelant, Vargas, testified: A native of Salvador, 24 years old, on Monday, October 10, 1927, at La Libertad, she boarded the S. S. "Ecuador" for San Francisco. (Vargas, 23, 27.) When boarding the steamer she met the second steward, Blanco. (Vargas, 28.) On Tuesday, October 11th, she went to her stateroom at about 9 P. M. (Vargas, 31.) About 6:30 A. M. on the following day, October 12th, she rose, unlocked her stateroom door, and lay down again.*

*The conflicting reasons given by her for unlocking the door are commented on elsewhere. See Brief pages 16 and 17.

(Vargas, 58.) Shortly after unlocking the door it was opened and in came Blanco. (Vargas, 59.) He offered to get her coffee but she refused it. (Vargas, 60.) Then he took her hand, talked to her, kissed her, and finally attacked her. (Vargas, 33, 60, 69.) She did not call out because it did not occur to her. (Vargas, 33.) Also she did not know who would come to her aid. (Vargas, 34.) Another reason she did not scream was because of the noise there is in the morning aboard ship—(that is the noise of other people)—she feared she might not be heard. (Vargas, 34.) She did not ring the electric bell, although there was one within reach from her berth. (Vargas, 70.) Neither alleged participant was injured or were their clothes torn. (Vargas, 69, 70.) After the attack she got up and went to breakfast (Vargas, 71) without complaining to the Captain about Blanco, or, in fact, ever saying anything to anyone about this alleged attack until four months afterwards. (Vargas, 74.) After the attack, on the way to San Francisco, Blanco wore her ring on his finger. (Vargas, 63, 68.) [Before United States Commissioner Krull the woman testified that she gave Blanco this ring to keep for her. (Vargas, 61.) Before the court she testified that he took it at the time of the alleged attack. (Vargas, 37.)] When the steamer arrived in San Francisco her brother, learning that Blanco had the ring, came to the steamer to get it. She introduced Blanco to her brother. (Vargas, 72.) Her brother had Blanco as a guest at his house for dinner, together with Ernestina Vargas and other relations (Vargas, 73) and Ernestina Vargas and her relatives went, as

Blanco's guests, to dinner at another time. (Vargas, 73.) When being entertained by and entertaining the Vargas family Blanco told Ernestina Vargas that he was not married. (Vargas, 73.) Blanco went to New York from San Francisco on the "Ecuador," but when he came back to San Francisco he brought various presents for the Vargas family. (Vargas, 78.) On this return trip he again had dinner with the libelant and her relatives. (Vargas, 78.) By the time Blanco came back again from another trip to New York libelant found she was to have a child (Vargas, 39). She then swore out a warrant and had Blanco arrested and taken to United States Commissioner Krull's office. (Vargas, 40, 53.)

On hearing her testimony on March 15, 1928, United States Commissioner Krull immediately threw out the case on the ground that it was not one of rape, although there was a possibility of a case of seduction with resulting rights against Blanco in the State Court. (Krull, 202.) On March 22, 1928, she filed the present suit for $50,000 against the Panama Mail Steamship Company. (Record, 5.)

Ralph Vargas testified:

He asked Blanco to his house for dinner. Blanco came and had dinner with his family, including the libelant. (R. Vargas, 112.) The next day he and his wife and the libelant dined with Blanco as his guests at the Mandarin Cafe. (R. Vargas, 112.) Everybody had a good time. (R. Vargas, 115.) Blanco used to telephone to the Vargas house. (R. Vargas, 115.) Blanco had two automobiles which he said he owned. (R. Vargas, 110.) He took the libelant and Ralph

Vargas riding twice. (R. Vargas, 110, 111.) Ralph Vargas understood that Blanco wanted to marry his sister. (R. Vargas, 115.) Then Blanco went off on his ship. When he came back from New York he brought presents. For Ralph Vargas he brought a pair of shoes, and for Mrs. Vargas a canary bird. (R. Vargas, 113.) Again Blanco came to dinner. (R. Vargas, 114.) Ralph Vargas gave Blanco a pillow in return and sold him two hats. (R. Vargas, 113, 119.) When the ship next came back from New York there was a dispute about the payment for these hats, and in the course of it Ralph Vargas learned that Blanco was married. (R. Vargas, 120.) At about the same time he learned that his sister expected a child. (R. Vargas, 107.) The next day they had Blanco arrested. (R. Vargas, 107.)

The testimony of Mrs. Ralph Vargas was to the same effect. She related the dinners, the presents, the automobile rides and a theater party. (M. Vargas, 152, 153.) And then she told of later discovering the condition of the libelant and that Blanco was married and that he had no money to give her. (M. Vargas, 147.)

These were the witnesses for the libelant. The other witnesses were of minor importance, except that they seemed to build up the evident theory of the court that if Blanco were the child's father, then the Panama Mail Steamship Company should pay the woman.

Examined on deposition the steward, Blanco, half Filipino, half Spanish, testified to little more than a formal acquaintance with Miss Vargas. He knew her

slightly, wished her "good morning" when she passed and never at any time had any relations with her. (Blanco, 211.) He testified of the various dinners referred to with the Vargas family, and of the various presents given by him as well as about the dispute regarding the hats. (Blanco, 211, 216.) He denied that he ever agreed to support the child or even that he had any interest in it. (Blanco, 221, 223.) It was just the kind of testimony that we might expect from an Oriental who wished to protect himself against any possible claim for the support of the child. He admitted nothing—to the Panama Mail Steamship Company or to anyone else.

The testimony of Angela Villavicencio seems absolutely conclusive that the whole story of the attack was absolutely false, first made up by the Vargas woman to excuse her condition—next used in an attempt to get revenge against Blanco for pretending to be a rich bachelor—and finally worked up in an effort to extract money from the Steamship Company.

Angela Villavicencio testified:

She came from Nicaragua on the S. S. "Ecuador." She first was in the second class, but owing to the fact that the only other woman in the second class left the ship, Miss Villavicencio was moved into the first class. (Villavicencio, 167, 168.) At La Libertad she was put into Stateroom No. 31 and occupied one berth. The other berth was occupied by Miss Vargas. She slept in Room No. 31 each night and rose only about the time of the breakfast bell. Blanco never was in the room and Miss Vargas never complained about him. (Villavicencio, 169, 173.)

No proof could be more conclusive than this testimony of this woman who had nothing to win or to lose by the outcome of the case. Yet the District Court seemed either to forget or ignore her testimony. Apparently that court, once it heard of this half-Oriental's pretending to be unmarried, decided to enter judgment and help the Vargas woman out. *The Villavicencio witness testified that no such attack was ever made.* This testimony that Angela Villavicencio occupied a berth in the stateroom at the time this attack was alleged to have been made was corroborated by the chief steward, the purser and the records of the company. (Lorenzen, 178, 179; Henry, 273; Mallory, 195.)

The trial was completed on September 14, 1928, and on December 15, 1928, without filing an opinion or making a single finding, the court simply entered judgment for $10,000 in favor of the libelant. The grounds on which the court acted are wholly unknown, and from the nature of the evidence that was introduced, and particularly from the character of the rulings which the court made, it is impossible to state whether the court had in mind seduction, or bastardy or some other similar charge. The nature of the evidence which the court allowed to be introduced, over objection of counsel for the respondent, showed clearly that the court completely confused the position of the Panama Mail Steamship Company and the position of Blanco, and that it evidently thought that if on any ground whatsoever any court might enter any judgment against Blanco then the Panama Mail Steamship Company should have a judgment entered against it.

V.

SPECIFICATION OF THE ERRORS RELIED ON.

The errors relied on are quite general except as to those concerning admissions of evidence. The failure to write any opinion or to make any findings in our opinion leaves this court completely unguided or controlled by any presumptions of any character, and makes the case one which should have been considered *de novo* by the Circuit Court of Appeals. In referring to the various specifications of error relating to the admissibility of evidence the petitioner primarily has as its purpose the emphasizing of what the District Court evidently had in mind during the trial of the case—the confusion of the position of the Panama Mail Steamship Company in the present action with the position of its steward Blanco, and treating him as if he were under trial for rape, seduction, bastardy, or some similar offense. The assignments of error relied on are:

First. If the court entered judgment on the ground of criminal assault or rape—and the court making no findings in any opinion or by a decree, left it entirely uncertain what his grounds were—the court erred because the facts show that there was neither rape nor criminal assault committed on the S. S. "Ecuador."

Second. If the court entered judgment on the ground of seduction—and the court making no findings in any opinion or by a decree, left it entirely uncertain what his grounds were—the court erred because the facts do not show seduction and the law does not allow recovery for seduction on the high seas against a corporation.

Third. If the court entered judgment on the ground of bastardy, the court erred because the law does not allow recovery for bastardy against a corporation.

Fourth. The court erred in not finding that no criminal assault or rape was committed on libelant on the S. S. "Ecuador."

Fifth. The court erred in the following particular:

Mr. Vargas testified that Mr. Shenick, a former port steward of the company, told him (Vargas) that Mr. Blanco told him (Shenick) that he (Blanco) would help in paying some of the expenses of Ernestina Vargas in connection with the expected baby.

The testimony was objected to as hearsay, and the court rules as follows:

> "The COURT. Was Blanco there with him?
> A. Yes, he was there.
> The COURT. All right, go ahead."

A long statement as to what Blanco said in regard to helping pay expenses of Miss Vargas was then admitted.

Sixth.* The court erred in the following particular:

Mrs. Emma Julian, mother-in-law of Ralph Vargas, testified through an interpreter that after the suit was brought, Blanco told her that he was sorry for what happened and that he would help pay for the child and that if the child was a boy he should be named after him, but if a girl, she should be named after Ernestina and that he would get a divorce.

Respondent objected to all this testimony as irrelevant on the ground that it had nothing to do with any claim against the Panama Mail Company.

The court overruled the objection.

The above testimony remained in the record.

Seventh.* The court erred in the following particular:

Mrs. Emma Julian under examination:

"Mr. HUTTON. Did Blanco on that occasion say that he would get a divorce from his wife, but he had not any case for divorce against her?

Mr. THACHER. I would like to object to that. Whatever that may be against Blanco, certainly it is not relevant against the Panama Mail.

The COURT. Overruled."

Mrs. Julian testified that Blanco so stated some months after the present suit was brought.

Eighth. The court erred in the following particular:

Mr. Mallory, Assistant General Manager of the Panama Mail Steamship Company, testified as to his familiarity with the S. S. "Ecuador" and with the construction of Room No. 31 (where libelant was alleged to have been assaulted) and with the open screen between that room and the alleyway.

"Mr. THACHER. Q. *What would be the effect of any unusual noise in Room 31?*

A. *It would be heard in the alleyway.*

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*These assignments of error affecting admissibility of evidence while constituting, in our opinion, ground for reversal are primarily inserted to show the position of the lower court. These various alleged conversations of Blanco months after the alleged attack are hardly admissions in a case not against him. An agent cannot bind his employer by admissions or other statements unless statements are *res gestae* or "made in the course of his employment and within the scope of his authority." See such cases as *McLeod Lumber Co. v. Western Redwood Co.*, 8 Fed. (2nd 930), *Railroad Company v. O'Brien*, 119 U. S. 99; *Wicker v. Scott*, 29 Fed. (2nd) 807, 809; 22 *Cor. Juris* 377.

A small amount of such erroneously admitted evidence would not make any particular difference. The large quantity of such irrelevant and incompetent testimony in this case was probably responsible in part for the confusion of the court as to the exact question of law and fact involved.

MR. HUTTON. *I object to that on the ground it is calling for the opinion of the witness.*

THE COURT. *Sustained. I have not heard any testimony of any noise whatever."*

The testimony was thereupon excluded.

Ninth. The court erred in entering a decree against the Panama Mail Steamship Company in favor of the libelant, Ernestina Isabelle Vargas, in the sum of ten thousand ($10,000) dollars, together with interest and costs, or for any sum whatever.

Tenth. The court erred in entering a judgment which was excessive in the amount of damages awarded.**

VI.

ARGUMENT.

A.

VARIOUS EXTRACTS FROM TESTIMONY SHOW THE NATURE OF THIS CLAIM.

1. Testimony of libelant regarding the alleged assault.

The outline of the evidence has already been given. To save examination of the record and to bring out even more clearly the sordid character of this whole affair, a few extracts from the actual testimony will be given.

Of the events on the steamer the Vargas woman testified in part:

After describing her stateroom, No. 31, she testified:

"Q. Are there many rooms on that corridor?

**The extent to which the court went can be judged upon reading a note in 1917 E. Ann. Cas. 135 on the inadequacy or excessiveness of verdict in a civil action for rape. $5000 was the highest amount allowed in any reported case except in one case where an $8000 verdict was reduced to $3000.

A. Yes, there were rooms to the right and rooms to the left." (Vargas, 30.)

The stateroom was not at all isolated.

"Q. Now, on the second night out, that is, the night that you left this last port on the Central American coast, did you go to bed?
A. Yes.
Q. About what time?
A. I left my deck chair about nine P. M." (Vargas, 31.)

No seasickness compelled her to remain in her berth.

"Q. And the bell was right there where the person in the bed might reach it without getting up?
A. Yes, so that you could put your hand over your head and ring it." (Vargas, 55.)

From her berth she could thus get service at any time.

"Q. Did you lock the door every night that you occupied that stateroom?
A. Yes.
Q. And a person on the outside couldn't release that bolt?
A. No." (Vargas, 56.)

With the door locked she had absolute protection.

She testified that on October 12, 1927, between 6 and 6:30 A. M. she got up and unlocked the door.

"Q. Why did you open the door?

A. I thought I might be able to go out.

Q. Were you dressed?

A. No.

Q. Were you in the habit of opening the door before you got dressed?

A. I got up; I don't know why exactly that I opened the door, but I wasn't dressed, only in night clothes.

Q. What did you do after opening the door?

A. I went back and lay down again.

* * * * * * *

Q. All you did when you got up at 6 in the morning was to unlock the door and go back to bed?

A. Yes, that's all." (Vargas, 57, 58, 59.)

* * * * * * *

"A. I left the bed for the purpose of opening up the door, because, as I could not go upstairs to get coffee, I thought it was better to have it brought there." (Vargas, 31, 32.)

* * * * * * *

"Q. Did you ring for coffee?

A. No.

Q. Why didn't you ring for coffee if you wanted it?

A. Because it was not time yet."* (Vargas, 79.)

This evidence is characteristic: Caught in giving one patently untruthful reason she would promptly make up another.

"After you went back to bed, what happened?

A. The door opened, and this gentleman entered, and asked how I was.

Q. What time was that?

A. Probably 6:30 or 7 o'clock, I don't remember exactly." (Vargas, 59.)

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*After testifying freely about times she testified:
Q. Did you look at your watch at that time—
A. I did not have any watch.
Q. How did you know what time it was?
A. I did not know. (Vargas, 51.)

It was surely a strange coincidence that as soon as this Central American native unlocked her door at about 6:30 in walked the Filipino waiter. How did he know about it?

"Q. What was said then?
A. *He asked me if I wanted some coffee.*
Q. *And after that?*
A. *I said I wanted none.*" (Vargas, 60.)

On cross-examination she testified:

"Q. *If it was for the coffee, why didn't you accept the coffee that Blanco, when he first came into the room, offered to give you?*
A. *Because he offered to give me coffee, and I knew that a messboy would bring it, I did not want to accept any favors from him.*
Q. *Why didn't you want to accept any favors from him, if he was the second steward, and you never had a word with him, except going up the gangplank?*
A. *Up to that time I did not know he was second steward.**
Q. *But did you think that he was one when he came into the room?*
A. *Any employee of the vessel.*" (Vargas, 79, 80.)

She opened the door to get coffee. Without the bell being rung in came the waiter and offered it to her. She did not wish to take it because then she would be accepting a favor from him. However she didn't know who he was. Seemingly this story was the product of an unusually low order of intelligence.

We shall not quote at any length from her testimony about this alleged attack. On her own story it was no attack whatever. (See *Mills v. United States, infra.*) She related how he talked to her. "I was

*Yet Vargas at another time testified that when she went on board she asked the second steward, Blanco, for the number of her stateroom. (Vargas, 67.)

telling him if he did anything he would be afterwards sorry." (Vargas, 33.)

"Q. But you did not call out at any time?
A. No I only supplicated and entreated him to leave me alone." (Vargas, 88.)

There was no injury to anyone. From her own story Blanco must have been in talking to her for some considerable time. (Vargas, 32, 33, 69, 70, 88, 89.)

"Q. *Why didn't you call out?*
A. *In the first place I did not holler out, because it did not occur to me,* because I was afflicted with what was happening.
Q. *What do you mean by that?*
A. *Besides, I was telling him to leave me alone, to loosen his grip.*
Q. I asked you why you did not call out.
A. Because at that particular moment I did not have courage to cry out, and not knowing who would come to my aid, *and my voice might not have been heard, and on account of the noise that there is in the morning aboard ship, I did not think it was possible to be heard.*"
(Vargas, 33, 34.)

All this evidence makes the type of this claim perfectly clear. Here this woman was on shipboard at about breakfast time with the entire crew and passenger list of a large steamer within 400 feet. She had assistance at every hand. But she did not call for assistance because she did not think of it, or because she didn't know who would help her out (as if it would make any difference), or because of the noise in the morning on board ship (the noise of the crew and passengers getting out and around the decks).

To even the most credulous court which considered the evidence, the absolute protection had by the woman must have been apparent. The penalty for rape on shipboard is death. One loud scream would

have been heard everywhere on the vessel, started passengers and crew immediately investigating, terrorized Blanco, and Blanco would have raced out of that room with almost the speed of a bullet. But the woman did not call out. On her own story she did not want to call out.

"Q. Well, how long after he left did you get up?

A. I don't remember exactly how long it was, but I got up about 8 o'clock.

Q. *What did you do when you got up?*

A. *I went to breakfast.*

Q. *Did you tell anyone about this?*

A. *No; I said nothing to anybody.*" (Vargas, 71.)

The episode as related very evidently did not make much effect upon her.

2. Conflicts in testimony of libelant.

The barefaced perjury of the libelant in this case was absolutely proved in connection with certain testimony regarding a ring. This ring was given by the father of Ralph Vargas, in San Salvador, to Ernestina Vargas to be carried to San Francisco and given to Ralph Vargas. Admittedly, after he met Ernestina Vargas, Blanco received possession of this ring and wore it right along. Before the United States Commissioner the libelant, Vargas, testified that a few days after the alleged attack she gave the ring to Blanco to take care of and he wore it on his finger. At the trial, apparently realizing how preposterous her first story was, she testified that Blanco stole it. In both cases she was a sworn witness and in both cases her testimony was reported. There could have been no mistake. The stories were absolutely different. Either she gave perjured testimony before the

United States Commissioner or before the United States District Court. There is no alternative. To bring out the absolute perjury we give extracts from her testimony in parallel columns.

BEFORE UNITED STATES COMMISSIONER KRULL LIBELANT TESTIFIED ON MARCH 15, 1928.

"Q. As a matter of fact, didn't you go to him and give him some rings to keep for you?

A. Yes, he met me and spoke to me, asking if he could help me, *and I gave him a ring which was too big for me, to keep for me.*

Q. What day was that?

A. I don't remember what day it was.

Q. Was it before he came in on the 12th?

A. Yes.

Q. Or was it afterwards?

A. I think it was afterwards.

Q. How many days afterwards?

A. I don't remember how many days after.

Q. But it was one or two days after the 12th?

A. I don't know; I can't positively say.

Q. The truth is, that you had only one conversation with him before he entered your room, that being the one you testified to, when you walked up the gangplank?

A. Yes, only one.

Q. *And the conversation relating to the ring was after the episode on the 12th?*

A. *Yes, after the 12th.*

Q. And just what occurred at that time? Where was it that you met him and gave him the ring?

A. I met him on the stairway; I don't know whether he was going up or down, but he might have been just there.

BEFORE THE UNITED STATES DISTRICT COURT LIBELANT TESTIFIED ON SEPTEMBER 28, 1928.

"Q. Now, at the time that you were struggling with Blanco, and he was consummating what you say he consummated, did anything fall off of your finger?

A. Yes, a ring fell off, which he gathered.

Q. What do you mean by 'gathered,' picked it up?

A. Yes, gathered up—he got the ring from the floor, and he took it with him; and I don't know whether he wore it or not.

Q. Where did you get that ring?

A. I brought it with me, because my father was sending it to my brother."

(Vargas, 36, 37.)

* * * * *

"A. After the 12th he found me up on the stairs, and then it was when he told me that that ring was too big for me.

Q. Too big for whom?

A. Too big for me.

Q. That meant too big for you, or for Blanco?

A. That it was too big for me."

(Vargas, 64.)

* * * * *

BEFORE UNITED STATES COMMISSIONER KRULL LIBELANT TESTIFIED ON MARCH 15, 1928.

Q. And what happened?

A. Nothing more than that he asked me if he could serve me and I spoke of the ring.

Q. What did you say exactly?

A. *When he offered his services, I told him that I was bringing this ring to my brother, and asked him to take care of it for me.*

* * * * *

Q. *This time that you gave Jose Blanco Reyes on the stairway the ring was the first time that you saw him after the molesting of the morning of the 12th?*

A. *Yes.*

Q. That was the first time that you saw him after the 12th, the first conversation that you had with him?

A. Yes.

Q. He took the ring from you?

A. Yes.

Q. *Did he put it on his finger?*

A. *Yes.*

Q. *And did he give it back to you at the end of the trip?*

A. *Yes.*

Q. When?

A. The day I arrived at San Francisco.

Q. *And he wore the ring during all that time?*

A. *I think so; I saw it on him several times.*

Q. You never asked him for it during that time?

A. No, I never asked him to give it back."

(See Defendant's Exhibit C, and Vargas, 61, 62, 63, 64, 65, 66, 67, 68.)

BEFORE THE UNITED STATES DISTRICT COURT LIBELANT TESTIFIED ON SEPTEMBER 28, 1928.

"A. It was not for the purpose of giving him the ring; the only thing he told me was the ring was too big."

(Vargas, 66.)

* * * * *

"Q. *Did he put it on his finger?*

A. *Yes.*

Q. *And did he give it back to you at the end of the trip?*

A. *Yes.*

A. Yes, he gave it to me, but after I arrived with my brother to bring it, to get it back.

Q. When?

A. The day I arrived in San Francisco.

Q. *And he wore the ring during all that time?*

A. *I think so; I saw it on him several times.*

Q. *You never asked him for it during that time?*

A. *No, I never asked him to give it back."*

(Vargas, 68.)

3. Testimony of libelant's roommate.

The testimony of Angela Villavicencio could not be more conclusive. She testified:

"Q. *You know Ernestina Vargas, do you?*
A. *Yes, I know her.*
Q. *When did you first meet her?*
A. *At La Libertad.*
Q. *What were the circumstances of your meeting her?*
A. *Because we were room-mates together.*
Q. *In what room?*
A. *In 31.*
Q. How did you happen to become room-mates with Ernestina Vargas at La Libertad?
A. *Because my passage was second-class passage, and as there was no woman, no other woman passenger in the second-class passage,* as I was recommended by the priest at Corinto, Mr. Henry, they put me over to the first-class.
Q. *Where was that that you went into the first-class cabin?*
A. *At La Libertad.*
Q. What time at La Libertad did you go into room 31?
A. *About between 5 and 6 o'clock P. M. in the afternoon.*
Q. *While you were at La Libertad?*
A. *Yes, at La Libertad.*
Q. Did you meet Ernestina there when you came into the stateroom?
A. No, I did not meet her in the stateroom. We met on deck.
Q. Before you both went to bed that night?
A. Yes.
Q. *Which berth did you occupy?*
A. *The one that is nearest the door of the stateroom.*
Q. *You slept there every night?*
A. *Yes, every night until we arrived here.*
Q. You got up after the breakfast bell rang, or about that time?

A. Yes.

Q. And you used to talk to Ernestina on and off between the time you came into the room at La Libertad and the time you arrived at San Francisco?

A. Yes, we spoke.

Q. *Did she make any complaint about Blanco to you?*

A. *No.*" (Villavicencio, 167, 168, 169.)

"Q. You never saw a man in the room while you were there?

A. No." (Villavicencio, 173.)

4. Subsequent relations between libelant and accused steward on shore.

The friendly relations on shore between Blanco and the libelant and her family utterly discredit the story of the libelant. Extracts from testimony produced by libelant follow:

"A. When I got off the boat to meet my brother, I didn't have the ring, and I told my brother about it, and we went back to get the ring from Reyes (Blanco).

Q. What happened?

A. He gave me the ring.

Q. Did you present him to your brother?

A. *Yes, I introduced him at that time, and said that he had taken care of the ring for me.*

Q. And your brother shook hands with him?

A. Yes." (Vargas, 72.)

* * * * * * *

"Q. Now, what was that about going out to dinner? Who asked that?

A. Blanco asked us if we would go out to supper with him Saturday night, the following night, so I said no, and my husband said to him, 'You come out to the house to supper.'

Q. He went out to supper?

A. Yes.

Q. *How many times did Blanco call at your house—more than once?*

A. *Yes, more than once.*" (Mildred Vargas, 143.)

* * * * * * *

"Q. *Then you drove off, and the next day, as I understand it he came up to your house and had dinner?*

A. *Yes.*

Q. *And everything was quite agreeable?*

A. *Yes.*

Q. Was it the next day that you and your family went out on an automobile ride with him?

A. I believe it was the next day he took us in his machine to the Mandarin for dinner." (Mildred Vargas, 152.)

"Q. *After that you went to the theatre, and everything was agreeable, was it not?*

A. *Yes.*

Q. I mean there was no unpleasantness?

A. No." (Mildred Vargas, 152, 153.)

Miss Vargas had testified to the same effect.

"Q. And you went to the theatre after you had dinner, did you?

A. *Yes, we went to a theatre.*" (Vargas, 77.)

"Q. *Who went along riding with you?*

A. *The three of us went, and the last time we took Mrs. Julian out for a ride, the mother of my wife.*" (Ralph Vargas, 110.)

"Q. *He brought another car and took you for an automobile ride?*

A. *Yes.*" (Ralph Vargas, 112.)

"Q. *Did he have an automobile?*

A. *Yes, two automobiles.*" (Ralph Vargas, 110.)

He was very clearly regarded as a rich bachelor.

"Q. And then when he came back the next time he brought a canary and a pair of shoes as presents, did he?

A. I tell you about those pair of shoes; he was wearing those pair of shoes and I said to him, 'What kind of shoes are those?' and he said, 'I always get them from New York'; he asked for my size, he didn't say anything else, and then he brought a pair of shoes; besides that I had a cushion and I see he fall in love with that cushion and he said, 'What a beautiful cushion, I wish I had one so I could have it in my car,' so the next time I made it for him, because he asked me for it, when he brought this pair of shoes, I gave the pillow to him.

Q. You gave him a pillow for a pair of shoes?

A. Yes.

Q. He brought your wife a canary bird?

A. He didn't bring a canary for anybody. He said. 'I got a canary over here that I had for a long time, I want to give it away to somebody because I have no use for it.'

Q. Had your wife asked him for a parrot?

A. *My wife asked him for a parrot and he was going to bring it.*"

The presents were most appealing. As stated, however, the canary was not the parrot asked for.

"Q. Then it was the second time the ship was here you had him out to dinner again?

A. Yes, I think I asked him, I invited him to come up to dinner, and I believe he got there very late." (Mildred Vargas, 153.)

"Q. Your sister never said that she hated him, or anything of that kind?

A. *Well, she said that fellow was bothering her, and my wife told me that, she said that fellow, he wants to marry your sister.*" (Ralph Vargas, 115.)

This was the obvious foundation of this case. The Vargas family thought Blanco a rich and most eligible bachelor seeking to marry Ernestina.

Ralph Vargas and Blanco, however, on the next trip became involved over a $15 questioned bill for hats. At this time his marriage and his lack of means were learned of.

"Q. *You gave the hats to Blanco?*
A. *Yes.*
Q. Whereabouts did you give them to him?
A. Down at the ship.
* * * * * * *
Q. And those two hats were for Blanco?
A. Yes.
Q. Because Blanco said he wanted to have two hats for a present?
A. Yes. I gave them to him where the ladder is.
* * * * * * *
Q. What happened next?
A. Then he took me to the other side and he told me he ain't got enough money to pay me, and he was going to send me the money.
Q. How much were you going to charge him for the hats?
A. $15.
* * * * * * *
A. Then when he left we saw a Filipino boy come out with the same boxes, and I followed that boy, because I knew the boxes, I knew the hats, and this Filipino boy went outside, and I watched where these hats were going, and I asked where they were going, and they belonged to Blanco's wife.
Q. Did they say for whom they were?
A. *Yes, he said that they were for his wife.*
Q. *He said they were for Blanco's wife?*
A. *Yes."* (Ralph Vargas, 119, 120.)

Mrs. Ralph Vargas testified about hunting up Blanco after she learned of her sister's condition.

"A. * * * And he said, 'Well, I don't know what to do, I have been down at Panama trying

to find somebody that they said would give me a medicine for her that she could take for that, and I was not able to find him,' and he said, 'I suppose we will need money for that, I have not any money right now, but I will be able to find some,' and I said, 'Well, what about marrying, can't you marry?' I was afraid my husband might find out, and he might do something rash, that was all I was afraid of. He said, 'I can't marry her now because I have a very important engagement.' I said, 'What can it be, are you married?' And he said, 'Yes, I am married, and I have some children.'" (Mildred Vargas, 147.)*

According to the story of Mr. and Mrs. Vargas they had every reason to feel angry at Blanco. Instead of the rich suitor expected to marry Ernestina he turned out to be married with children, and Ernestina expecting a child. It was natural that they felt angry toward him—but the Panama Mail Steamship Company had nothing to do with his posing as a rich bachelor.

5. Testimony of United States Commissioner regarding hearing before him.

As a conclusion of these extracts the testimony of United States Commissioner Krull is of interest.

He testified:

"Q. Mr. Krull, you were the United States Commissioner before whom the charges against

*The testimony of Mrs. Ralph Vargas is of interest in this. She testified of her conversation with Blanco. "He told me that in Panama he was looking for somebody, that he was intending to get a medicine for me, and he was unable to find that party." (Mrs. Ralph Vargas, 146.)

If the testimony of Mrs. Vargas is to be believed, in spite of the statements to the contrary of Ernestina Vargas and of Blanco, Blanco knew all about the condition of Ernestina Vargas long before his ship arrived in San Francisco in March, 1928. Ernestina Vargas must have and undoubtedly did write or tell him of her condition. They were obvicualy friendly. It was only when her family discovered her condition that she invented this "vis major" story.

this man Blanco were brought last March by Miss Vargas?

A. Yes, March 15, there was a complaint by Ernestina Vargas charging Jose Blanco Reyes with an assault under Section 278 of the Criminal Code, that is, he was charged with rape on the high seas on board the steamer 'Ecuador,' committed on or about October 12, 1927.

Q. What was the disposition of the case?

A. The charge of rape was dismissed.

* * * * * * *

Q. What was the conversation, if any, if you remember?

A. There was considerable conversation. The United States Attorney was present at this hearing, and went into the case quite in detail, and after I *determined that there was not a case of rape,* I suggested that there was a possibility of a case of seduction, and then a conversation ensued between the United States Attorney and the parties there, and the United States Attorney suggested that the plaintiff might pursue her remedy in the state court.

* * * * * * *

Q. What is the exact entry in your book?

A. The exact entry is *'after a detailed and full hearing the evidence is not sufficient to warrant a holding on the charge of rape,* and the case is accordingly dismissed and the defendant discharged for this particular offense.' Then there is a note here, 'U. S. Attorney suggested that the complainant make complaint to the state court on account of her condition.' " (Krull, 201, 202, 203.)

On cross-examination United States Commissioner Krull testified:

"Q. The only doubt you had in your mind was whether it was rape or whether it was seduction?

A. *Well, I did not have any doubt as to the rape charge."* (Krull, 205.)

B.

THE OPINION OF THE CIRCUIT COURT OF APPEALS SHOWS THAT THAT COURT DID NOT GIVE DUE CONSIDERATION TO THE LAW AND FACTS INVOLVED.

The opinion of the Circuit Court of Appeals is very short. Except for the purely formal part of it the opinion reads:

> "The utmost that can be claimed by the appellant is that the adverse decree is based on conflicting testimony taken largely in open court. Only two witnesses, the appellee and the steward, gave direct testimony concerning the alleged assault. The testimony of the appellee fully supported the charge, and that of the steward denies it in toto. The appellant contends, however, that the testimony of the appellee should be rejected because she made no outcry at the time and did not complain of the outrage committed against her for a period of some five months, or until she discovered that she was pregnant. A number of criminal cases have been cited in support of this view, but whatever the rule may be in such cases we think it is well settled that in civil cases no such strict rule obtains, and that the credibility of the complaining party is for the court or jury, in view of all the surrounding circumstances. Deah v. Raples, 39 N. E. 952; Linville v. Green, 102 S. W. 67; Schenk v. Dunkelow, 37 N. W. 886; Kramer v. Weigand, 135 N. W. 230; Jensen v. Lawrence, 94 Wash. 148.
>
> "The court below, after hearing the testimony of the appellee, together with her reasons for not making an outcry and for not sooner complaining of the outrage, gave credence to her story, and it it is not for us to say that the court erred in so doing. For if the case made by the appellee was not entirely free from suspicion, the defense itself was weak. The brief of the appellant practically concedes that the steward had sexual intercourse with this passenger, claiming that it was voluntary, but if no such concession was made, the

overwhelming weight of the testimony clearly establishes the fact. And from that fact, two conclusions follow. First, that the chief witness for the appellant was guilty of false swearing, and, second, that the girl who occupied the stateroom with the appellee during the greater part of the voyage was not present when the outrage was committed. Without attempting to further review the details of the testimony, from which no good can result, we deem it sufficient to say that this case belongs to that class where appellate courts refuse to review decisions of trial courts based on conflicting testimony taken before them, unless the record discloses some plain error of fact, or unless there is a misapplication of some rule of law.

"The appellee contends that the decree was less than it should have been, but we find no abuse of discretion in that regard.

"The decree is affirmed, with interest from its date, and for costs in this court."

It will be seen that the court hastily thought the case was one of facts and gave it very little attention after thinking of it in that light. Had the court not been so busy and had it, as a result, given the case careful consideration it would have realized that it was not a case merely involving a decision of facts and it would have also realized that the conflicting testimony rule did not apply.

The complete error into which the court fell is manifest from the opening sentence reading:

"The utmost that can be claimed by the appellant is that the adverse decree is based on conflicting testimony taken largely in open court."

As the law and the facts already make clear, such a statement shows a misconception of the matter. In

the first place, under the law of the *Mills v. United States (infra)* opinion, and other decisions cited, the woman never testified to a case of rape. As a matter of law it was not rape nor anything like it. Her testimony immediately opened up the question of law as to whether a woman who is attacked when there is assistance at every hand, but who, for her own reasons, saw fit not to call out, can be held to be criminally assaulted. The courts have uniformly held that it is the duty of the woman to use every means possible for defending herself, including her most effective weapon of screaming, and that if she does not resist to the maximum she has not been criminally assaulted. Upon the testimony of the Vargas woman alone the question is immediately opened up as to whether, under the cases, this could be considered in any respect a criminal assault. This question was never passed on. The facts as constituting rape in view of the cases presents an immediate question of law.

So far as conflicting testimony taken largely in open court is concerned, it must be remembered that the Vargas woman testified in open court, but that the steward Blanco testified on deposition. It cannot, in any sense, be viewed as a case where both witnesses testified in open court because they did not so testify.

But the opinion then goes on to state:

> "Only two witnesses, the appellee and the steward, gave direct testimony concerning the alleged assault. The testimony of the appellee fully supported the charge, and that of the steward denies it in toto. The appellant contends, however, that the testimony of the appellee should be rejected because she made no outcry at the time and did

> not complain of the outrage committed against her for a period of some five months, or until she discovered that she was pregnant."

We do not state that the testimony should be in all respects rejected because the woman admittedly made no outcry. But we do say that if the woman made no outcry when the evidence shows clearly that assistance was at hand, then the crime is not, under the decision of the United States Supreme Court, rape. Regarding her concealment of the alleged attack, that is another matter. We state that under the law, as we have already cited it, if a woman conceals an injury of this character for any considerable time such a circumstance is very strong evidence that her testimony is false, and this is the law of rape. The cases cited by the Circuit Court of Appeals in connection with the failure to call out we will deal with shortly. They do not in any way affect the law as the Supreme Court stated it in the *Mills* case *(infra)* and as it is generally recognized.

The Circuit Court of Appeals stated:

> "The court below, after hearing the testimony of the appellee, together with her reasons for not making an outcry and for not sooner complaining of the outrage, gave credence to her story, and it is not for us to say that the court erred in so doing."

This sentence refusing to consider the facts is in absolute harmony with the conclusion of the opinion in which it is stated:

> "Without attempting to further review the details of the testimony, from which no good can

result, we deem it sufficient to say that this case belongs to that class where appellate courts refuse to review decisions of trial courts based on conflicting testimony taken before them, unless the record discloses some plain error of fact, or unless there is a misapplication of some rule of law."

These two sentences show the clear basis of the opinion of the upper court. It thought that there were facts in the record and although the question submitted was largely a question of mixed law and facts the upper court refused to consider the matter because the lower court had made a decision. It was not that the lower court had entered a finding because there was no finding. It was merely because the lower court had decided the case at all that the upper court refused to even consider the facts although the questions presented were of mixed fact and law. Very clearly the upper court simply shut its mind after it made out that the basis of the claim was a charge of rape.

The opinion states:

"For if the case made by the appellee was not entirely free from suspicion, the defense itself was weak. The brief of the appellant practically concedes that the steward had sexual intercourse with this passenger, claiming that it was voluntary, but if no such concession was made, the overwhelming weight of the testimony clearly establishes the fact. And from that fact, two conclusions follow. First, that the chief witness for the appellant was guilty of false swearing, and, second, that the girl who occupied the stateroom with the appellee during the greater part of the voyage was not present when the outrage was committed."

The upper court misunderstood the brief of the petitioner if it thought there was any concession of the relations between the Vargas woman and this Filipino. We take the position now, and we have always taken the position, that we do not know anything about it. Oriental waiters are rather a low class, as anyone knows who has employed them. What Chinamen or Japanese or Filipinos do when they are not actually waiting on table or looking after a house is something which few employers know. Their idea of the relation of the sexes is as different from the American idea as is possible. They are an entirely different race of people. The fact that this Filipino waiter was ingratiating himself with the family of this libellant, Vargas, indicated that he had some motive, and an obvious motive would be possible relation with this woman, Ernestina Vargas. We think it probable that this Filipino waiter was giving these various presents to the libellant's family because of his concealed relations with this woman.* It is all a

*Our suspicions were practically confirmed when libelant Vargas testified to receiving from libelant in December, 1927—two months after the alleged attack—a card (introduced for identification) reading:

IT IS CHRISTMAS AND I WISH
YOU HAPPINESS SWEETHEART

CHRISTMAS GREETINGS
SWEETHEART

A happier Christmastide than this
I've never known before,
No other season's brought such cheer
Or held such gifts in store.

And all because each future hour
This merry season through
Is golden bright indeed sweetheart
With tender thoughts of you.

Your Loving
Blanco.

(Vargas, 48.)

This card proved to us that Blanco and the Vargas woman were on most friendly terms.

matter of surmise because both the woman and the waiter deny it. So far as our opinion of the libellant is concerned, and what she may have done, it is simply based on the fact that in our experience even semi-white women who consort with orientals are of a very low class. Throughout this case we consistently but unsuccessfuly endeavored to point out to the District Court that the paternity of this child cannot be the turning point on which the case should be decided. The only question is whether on the date in question this Filipino steward attacked this woman.

The conclusions which the Circuit Court of Appeals draws are proof that the case received very small consideration in the Appellate Court. The statement of the court that if the steward had relations with this passenger then the steward "was guilty of false swearing" is perfectly obvious. We do not deny that this steward is guilty of false swearing. The Panama Mail Steamship Company when sued, was, of course, absolutely in the hands of the two parties, the man Blanco and the woman Vargas. It was caught between a Filipino and a Central American native to whom a Filipino was a social equal. It had no other means to check up the story. An immediate investigation at the time of the offense would have shown definitely whether the woman was telling the truth or not. Because the woman waited for nearly five months the Panama Mail Steamship Company was largely in the hands of this Filipino steward Blanco. Blanco denied that he ever had anything to do with the woman at all, with the exception of the various entertainments after the ship arrived in port. He is a Filipino and from

the testimony in this case we think that he lied to us. Anyone having experience with certain lower classes of these orientals knows that very rarely do they tell the truth. We do not condemn all Filipinos, but anyone who has lived on the West Coast, or had these Filipinos as household servants, knows that certain classes are anything but truthful; that they tell all kinds of stories; that they are not honest like the Chinese, and that they have many faults. In spite of this fact they are frequently employed as servants on the West Coast by individuals in their homes and also by companies as waiters, because it is difficult to obtain anyone else. We will freely admit that this witness probably did not tell the truth to us or to anyone else. But the fact that a Filipino waiter from whom little can be expected in the way of integrity happened to be the Panama Mail Steamship Company's witness, cannot condemn the Panama Mail Steamship Company. In this connection it may be said that while a low class of Filipinos frequently include liars and sneaks and thieves, it is very seldom that they commit, against white persons, crimes of any great violence such as murder or highway robbery or assault. They are a different class of people from the gangster type prevalent in certain cities.

The principal deduction made by the court is, however, that the paternity of the child by this waiter proved "that the girl who occupied the stateroom with the appellee during the greater part of the voyage was not present when the outrage was committed." Such a conclusion obviously does not follow.

Proof that Blanco was the father of the child, even if made, is certainly not proof that Blanco assaulted the child's mother. Yet that is the effect of this statement of the Circuit Court of Appeals. The conclusion is even stronger. It is that if Blanco was the child's father then such fatherhood proves that the mother was criminally assaulted at a particular time and in a particular stateroom. That is the conclusion on which this judgment was affirmed in the upper court. The conclusion shows one thing. It shows that the upper court, in the crush of business now being dispatched by that court, in promptly getting its work out did not work out the facts or the law and that the court was under an erroneous impression regarding both.

The cases cited by the Circuit Court of Appeals relative to the rule in civil cases regarding the necessity for calling out or for complaining are, in our opinion, of a kind entirely different from the case at issue. They, of course, all concern cases which were brought against the actual perpetrator of the crime and none of them deal with cases where the employer is sued. Certain of the cases are not rape cases at all, but are merely assault and battery cases—a class of case which is naturally regarded as much less serious at law and which carries much less damages than an actual rape case.

In *Dean v. Raplee* (N. Y.), 39 N. E. 952, a 14-year-old child, an orphan, was taken into the house of the defendant under an arrangement by which he was to board, clothe and educate her. The young girl was

totally inexperienced, threatened by this defendant to whom, as an orphan, she had been turned over, and was obviously, because of her "extreme youth, inexperience, and dependence united with the principle of fear and obedience," terrified of her custodian. The court laid great stress on the fact of her youth and on the fact that "consent or nonresistance on the part of a girl of that age was not to be understood in the same way as in the case of like acts committed upon a woman of more mature years." On a divided court, three to two, in which Judge Peckham, later Mr. Justice Peckham, of the United States Supreme Court, and Judge Edward T. Bartlett dissented, the judgment was unheld.

A case more different from the present action can hardly be imagined. In this case the woman was 24 years old, and far from being in the custody of the defendant, she was like any other passenger on board the ship, and she was a member of her brother's family in San Francisco for months before she saw fit to mention the alleged attack.

In *Jensen v. Lawrence,* 94 Wash. 148, 162 Pac. 40, the court specifically charged:

> "You are instructed that if at the time of the alleged assault, or within a reasonable time thereafter, the plaintiff did not make an outcry, and that she did not do so as soon thereafter as opportunity offered itself, unless she was prevented from making such outcry by fear and threats, plaintiff would not be entitled to recover; * * *"

This instruction is the unquestioned law and it is the law which was not applied in the present case.

The libelant, Vargas, did not make any outcry and she did not make any complaint for months. There was no fear connected with her case, since obviously this waiter was not in a position to harm her. If a sufficient reason for not making a complaint is that such complaint is always unpleasant to the party making it, then no such complaint need ever be made in a case of rape until the actual accusation is made.

In *Linville v. Green* (Mo. App.) 102 S. W. 67, a $3000 judgment for assault and battery on a 19-year-old girl by a 45-year old man was affirmed. The court, dealing with the question of the calling out by the woman stated that this was not necessary in the case under consideration because the attack was so far off that the woman could not be heard. Referring to the general law of the situation the court, in the course of its opinion, said:

> "In Robinson v. Musser, 78 Mo. 153, the woman, who sleeping in bed with a daughter of her alleged assailant, permitted him, while she was awake, to lift her from the bed and carry her to another part of the house, without making any outcry. She said she did this because she thought it would create a great scandal, and she felt that she was mistress of the situation. Enough of an outcry to awaken the daughter would have saved her honor, and the Supreme Court very properly thought she was far too complacent and considerate for her own good. And in another case (Champagne v. Haney, 189 Mo. 709, 88 S. W. 92), the prosecuting witness permitted herself to be 'ravished' while people were awake in an adjoining house 90 feet away, who could easily have been alarmed had she screamed. In that case the Supreme Court would not permit the charge of rape to stand. But, where the encounter occurs in an isolated place, without any

likelihood that an outcry, however vigorous, will bring relief, we do not perceive why a woman thus assailed should scream, though, perhaps, it would be a very natural thing for her to do. For practical purposes, she would better save her breath for the physical struggle."

In the case here under consideration there were probably 300 people, including the crew, within a distance of 500 feet of where this alleged attack was going on. One scream by the Vargas woman would undoubtedly have been heard over a great part of the ship and would have been immediately investigated. Furthermore, any such scream would have obviously terrified this steward in case he was making any attack. For a member of a crew to be found attacking a passenger on shipboard is punishable by years in the penitentiary, and for this waiter to have made an attack when anyone was apt to respond to the screams of the woman would have been unthinkable and the act of a clearly insane person. But the libelant, Vargas, stated that she did not call out because she did not think of it and because she did not know just who would come to her assistance.

In *Kramer v. Weigand,* Mo. 135 N. W. 230, the court upheld a $5000 judgment for assault and battery on a woman. The facts are not entirely clear, but it appears that the plaintiff was living at the home of the defendant and did not tell anyone about the assault for several weeks. It seems purely an assault case under different circumstances.

Schenk v. Dunkelow, 37 N. W. 886, was an action in which a judgment for $1500 for trespass to the

plaintiff's person which resulted in the birth of a child, was affirmed. The time of delay of the woman in making the complaint and the actual facts of the case do not appear.

It is submitted that these cases are cases which do not in any way change the law as set out in the *Mills* case *(infra)* or set out generally as applying to rape. The fact remains that it is a charge most easy to make and very difficult to rebut. This applies with overwhelming force to the case of some person who is sued for an alleged criminal assault committed by his Filipino servant five months before. It becomes extraordinarily difficult for the defendant to disprove the charge. This is because the defendant personally has no actual knowledge and must largely depend on what such a Filipino steward chooses to tell him.

Had the Circuit Court of Appeals gone into the facts and law of the case as a case de novo, or had it carefully considered the facts in their relation to the law set out in *Mills v. United States* (*infra*), or similar cases, and had it not practically refused to review the matter because of the decree of the court below, we are convinced that the decision would have been entirely different.

C.

THE LAW OF RAPE AFFECTING THIS CASE.

It is advisable here to consider the law. How little the law was considered in the District Court was

shown by the refusal of the lower court to allow the Steamship Company to prove that a scream in room No. 31 would have been heard all over the ship. (See Assignment of Error Eight, page 13.) Fortunately a leading case on the subject has been decided by the United States Supreme Court in *Mills v. United States,* 164 U. S. 644. This case was not referred to in its opinion by the Circuit Court of Appeals and the rulings and decision indicate clearly that its context was not in the mind of the District Court. The various elements which must be present before any such crime can be made out against a defendant will be dealt with serially.

1. Owing to the ease with which accusations of rape are made the courts require the strictest proof. Great caution is exercised by the courts and the entry of a judgment on the testimony of the complainant alone with circumstances tending to discredit her has been termed "a blot upon jurisprudence."

As was said by the Supreme Court of the United States in *Mills v. United States* (*supra*):

> "The crime itself is one of the most detestable and abominable that can be committed, yet a charge of that nature is also one which *all judges have recognized as easy to be made and hard to be defended against;** and it has been said that *very great caution is requisite upon all trials for this crime, in order that the natural indignation*** *of*

*If it is hard for a man to defend against this class of case against himself, one may consider the impossible position of an employer suddenly sued for the alleged dereliction of an Oriental employee five months before.

**As the Court recognizes, in a matter of this kind, the "natural indignation" aroused by the "mere charge" is insufficient to condemn. Without an opinion it is impossible to state the basis of the judgment. The rulings indicate that the mere charge was sufficient to cause the Court to ignore the general law on the subject, the discrediting circumstances testified to by the Vargas woman, the testimony of Angela Villavicencio, and to enter a judgment for $10,000 without an opinion or a finding.

men which is aroused against the perpetrator of such an outrage upon a defenseless woman may not be misdirected, and *the mere charge taken for proper proof of the crime* on the part of the person on trial."*

This statement of Mr. Justice Peckham is almost a repetition of the statement of Judge Hale 150 years previously when he said:

"It is true rape is a most detestable crime and therefore ought severely and impartially to be punished with death; but it must be remembered that it is an accusation easily to be made and hard to be proved and hard to be defended by the party accused though he be ever so innocent."

The result of the fact that the charge can be readily brought has resulted in certain proof being demanded before any defendant will be condemned for this crime. As Blackstone wrote:

"If she concealed the injury for any considerable time after she had opportunity to complain; *if* the place where the act was alleged to be committed was where it was possible she might have been heard and *she made no outcry; these and the like circumstances carry a strong but not conclusive presumption that her testimony is false or feigned."*

(*Blackstone,* Vol. 4, Sec. 212.)

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*The reaction upon certain persons of an accusation of this type of offense is well brought out in a recent work by Professor John Rathbone Oliver, an eminent psychiatrist of Baltimore, Maryland. In a volume entitled "Four Square," published by the MacMillan Company in 1929, at page 135, he writes:

"In one year, for example, in cases of sexual assault, the juries will find men guilty on the flimsiest evidence, and there seems to be a determination in that composit mind to send to prison anyone who is even accused of this one particular offense. Two years later, a similar cross section, again representing the same community, will do exactly the opposite thing. And the State's Attorney wrings his hands in despair, because, in a case of sexual assault, he doesn't seem able to get a conviction, no matter how strong his evidence may be."

The law is so elementary that even articles for the general public recognizes it. As is stated in the *International Encyclopedia,* Vol. 18, page 550:

> "One of the important circumstances attending the crime of rape is the mode of proof and in this respect it differs from other crimes. It is held to be all but essential as a corroboration of a woman's testimony that if her cries of resistance were not heard at all events she should have immediately after the offense complained on the first opportunity to her friends or relatives."

The California Law covers the situation in *Lind v. Closs,* 88 Cal. 6, 13. This was an action for damages for alleged rape. The court, in reversing the judgment of the lower court, said:

> " 'It has been several times held in this state, where the accused parties have been convicted of rape on the *testimony of the complainant alone, and under circumstances tending to throw discredit upon her testimony,* that the judgments should be reversed, the court saying that "a *conviction upon such evidence would be a blot upon the jurisprudence of the country, and a libel upon jury trials,*" and that "the ends of justice demand that the cause shall be tried anew." (People v. Benson, 6 Cal. 221; 65 Am. Dec. 506; People v. Hamilton, 46 Cal. 540; People v. Brown, 47 Cal. 447; People v. Ardaga, 51 Cal. 371.)
>
> " 'We think these cases in point here, and that the ends of justice require that this case be tried anew.
>
> " 'We therefore advise that the judgment and order be reversed, and the cause remanded for a new trial.' "

It is essential for the safety of the general public that the courts require substantiating evidence in suits based on alleged attack upon women. As the Califor-

nia Supreme Court said in *People v. Benson,* 6 Cal. 221, 223:

> *"There is no class of prosecutions attended with so much danger, or which afford so ample an opportunity for the free play of malice* and private vengeance. In such cases the accused is almost defenseless, and Courts, in view of the facility with which charges of this character may be invented and maintained, have been strict in laying down the rule which should govern the jury in their finding."

2. The utmost resistance is required.

To warrant a holding of rape it must be shown that resistance was to the utmost. Mere non-consent is not enough. The law is elementary and it was emphatically stated in *Mills v. United States (supra).* In that case, discussing the obvious error of an Arkansas judge, the court said of his erroneous charge.

> "But the charge in question carried much more extensive ground. It covered the case where no threats were made; where no active resistance was overcome; where the woman was not unconscious, but where there was simply non-consent on her part and no real resistance whatever. Such non-consent as that is no more than a mere lack of acquiescence and is not enough to constitute the crime of rape." (164 U. S. at 648.)

No language could be more pertinent than this. The Vargas woman testified:

> "I was telling him if he did anything to me he would be afterwards sorry. He would not say anything when I was struggling, he would not use many words, but he would repeat that he liked me, and he liked me. As I was only in my nightgown, he finally was able to overcome me." (Vargas, 33.)

The testimony of Angela Villavicencio showed that not a word of this was true. The Vargas woman's later actions show that it was untrue. But granting that it was true—it was in no way rape. There was not a blow struck, nor a scratch, nor the slightest scream. The case was, on the woman's own story a mere matter of lack of acquiescence within the four corners of the *Mills v. United States* (*supra*) opinion, and in no degree the crime of rape. But the lower courts absolutely ignored this ruling case and this obviously controlling opinion of the United States Supreme Court.

And as was said in *Mills v. United States* (*supra*) at pages 644, 648, 649:

> "The mere non-consent of a female to intercourse where she is in possession of her natural, mental, and physical powers, is not overcome by numbers or terrified by threats, or in such place and position that resistance would be useless, does not constitute the crime of rape on the part of the man * * *
>
> "Bishop in his treatise on Criminal Law says that the proposition as to the element of consent, deducible from the authorities, is that although the crime is completed where the connection takes place without the consent of the female, yet in the ordinary case where the woman is awake, of mature years, of sound mind and not in fear, a failure to oppose the carnal act is consent; and *though she object verbally, if she make no outcry and no resistance, she by her conduct consents, and the act is not rape* in the man. 2 Bishop, Crim. Law, S 1122. This is consistent, we think, with most of the authorities on the subject. See People v. Dohring, 59 N. Y. 374 (17 Am. Rep. 349), and cases there cited. In the New York case it was held, after an examination and review of

the cases, that if the woman at the time was conscious, had the possession of her natural, mental, and physical powers, was not overcome by numbers or terrified by threats, or in such place and position that resistance would have been useless, it must also be made to appear that she did resist to the extent of her ability at the time and under the circumstances."

In *People v. Dohring,* 59 N. Y. 374 (referred to), the court said in part:

> "It is an extreme which they put, that shall be no excuse. So in Viner it is laid down, that *a woman cannot be ravished by one man without some extraordinary circumstances of force.* 18 Viner's Ab. 155, Rape, pl. 11. In The People v. Abbott, 19 Wend. 192, Cowen, J., says: 'Any fact tending to the inference that there was not the utmost reluctance and the utmost resistance, is always received.'"

As stated in *Oleson v. State,* 11 Neb. 276, the court said:

> * * * "The prosecutrix, if she was the weaker party, was bound to resist to the utmost. Nature had given her hands and feet *with which she could kick and strike, teeth to bite, and a voice to cry out; all these should have been put in requisition in defense of her chastity.*"

See:

Conners v. State, 47 Wis. 523;

Whittaker v. State, 50 Wis. 518; 36 Am. Rep. 856.

There seems little point in cumulating these cases. They are of the type of *State v. Cowing,* 99 Minn. 123. The court, in its opinion, said among other things:

"* * * there is no specific act of resistance testified to. * * * She does not say that she employed the instinctive devices of self-defense; * * * Neither the victim nor the perpetrator appear to have borne any bruise or mark resulting from the struggle.

* * * * * * *

* * * Under ordinary circumstances it is the duty of the woman injured in this way, or of her friends, to obtain prompt medical advice; and the omission to do so, in cases of alleged rape, is a fact which subjects the prosecutrix to discredit. 1 Whart. on Crim. Law (10th ed.), S. 565. That there was no indication of violence is a strong circumstance of defense. * * * In State v. Burgdorf, 53 Mo. 67, it is said: *'It certainly must have been a very amicable struggle which would inflict no bruises on the girl.'* "

See general note on the subject in 9 *Ann. Cas.* 572.

And in *Brown v. State,* 127 Wis. 193; 7 Ann. Cas. 258, the court said in part:

"We need not reiterate those considerations of the ease of assertion of the forcible accomplishment of the sexual act, with impossibility of defense save by direct denial, *or of the proneness of the woman, when she finds the fact of her disgrace discovered or likely of discovery, to minimize her fault by asserting vis major,* which have led courts, and none more strenuously than this, to hold to a very strict rule of proof in such cases. * * * Not only must there be entire absence of medical consent or assent, but there must be the most vehement exercise of every physical means or faculty within the woman's power to resist the penetration of her person, and this must be shown to persist until the offense is consummated. * * * Turning to the testimony of prosecutrix, we find it limited to the general statement, often repeated, that she tried as hard as she could to get away. Except for one demand, when first seized, to 'let

me go,' and inarticulate screams, she mentions no verbal protests.

* * * * * * *

A woman's means of protection are not limited to that, but she is equipped to interpose most effective obstacles by means of hands and limbs and pelvic muscles. Indeed, medical writers insist that these obstacles are practically insuperable in absence of more than the usual relative disproportion of age and strength between man and woman, though no such impossibility is recognized as a rule of law. 3 Wharton & S. Med. Jr., Secs. 172, 188, and authorities cited; 1 Beck. Med. Jr. 203. In addition to the interposition of such obstacles is the ability and tendency of reprisal, of counter physical attack. It is hardly within range of reason that a man should come out of so desperate an encounter as the determined normal woman would make necessary, without signs thereof upon his face, hands, or clothing. Yet this prosecutrix, of at least fair intelligence, education, and ability of expression, in her narrative mentions no single act of resistance or reprisal. It is inconceivable that such efforts should have been forgotten if they were made, or should fail of prominence in her narrative. * * * This court does not hold, with some, that, as matter of law, rape cannot be established by the uncorroborated testimony of the sufferer, but, in common with all courts, recognizes that, without such corroboration, her testimony must be most clear and convincing. Among the corroborating circumstances almost universally present in cases of actual rape are the *signs and marks of the struggle upon the clothing and persons of the participants, and the complaint by the sufferer at the earliest opportunity.* In the present case the former is absolutely wanting, for the one-inch rip in prosecutrix's underwear was not shown to be of a character or location significant of force or violence. Not a bruise or scratch on either was proved, and none existed on prosecutrix, for she was carefully

> examined by physicians. * * * When one pauses to reflect upon the terrific resistance which the determined woman should make, such a situation is well nigh incredible. * * * Nor is this thoughtfulness of the disarrangement of her clothing *consistent with the outraged woman's terror-stricken flight to friends to give the alarm and seek aid which is to be expected.*"

The case of *Brown v. State* is a standard case showing that the courts will not pave the way for every kind of blackmailing case through holding a defendant liable for criminal assault upon testimony which is either weak or unsupported. In each case which has been examined, including the many cases which have been reversed, the evidence has been vastly stronger *than in this present Vargas* case. It seems most clear that all thoroughly weak cases never reach the appellate courts; they are thrown out as a matter of course either by the lower court or by the committing magistrate in the same manner that United States Attorney Hatfield and United States Commissioner Krull dismissed the complaint made by the libelant against Jose Blanco.

But this entire body of law was ignored by the lower courts.

3. The duty to call out.

The courts lay great emphasis on the duty of a woman attacked to call out in case she is to later claim that rape was committed upon her. This is for the obvious reason that where assistance is to be had by calling out, a woman really resisting an attack would call for the assistance.

"Proof of the failure of the female to make any outcry tends to show that she consented to the intercourse, but if the transaction occurs at a place so remote from all human help that all outcry must be unavailing, it has been held that outcry need not be made, as the law does not require the doing of impossible or useless acts."

22 *R. C. L.* 1187;

State v. Cross, 12 Ia. 66;

Oleson v. State, 11 Neb. 276;

33 *Cyc.* 1489.

In *Jensen v. Lawrence,* 94 Wash. 148, the court instructed the jury:

"You are instructed that *if at the time of the alleged assault, or within a reasonable time thereafter, the plaintiff did not make an outcry, and that she did not do so as soon thereafter as opportunity offered itself,* unless she was prevented from making such outcry by fear and threats, *plaintiff would not be entitled to recover.*"

But here with probably 200 persons who would hear a scream the woman was discreetly silent—among other preposterous reasons because she did not know just who would come to her rescue, and also because the others made too much noise.

4. The duty to complain.

It must be clear to anyone who gives any thought to this case whatever, that if a woman was attacked in a stateroom by a steward she would not only scream when she saw that he intended some violence on her, but if she was attacked, with all the marks of a violent assault on her and in a state of uncontrollable excitement, she would at once rush from her stateroom and

relate to the vessel's officers how shamefully she had been treated. It would be as easy to picture a man who was held up and robbed on board a steamer never saying anything about it for months afterwards. No court would believe him. The fact of failure to complain as proof that a woman was not forcibly attacked has been brought out in various cases. In *State v. Kinney,* 44 Conn. 153 (26 Am. Rep. 438), the court said:

> "Why has the rule been adopted that in prosecution for rape, and for attempts to commit rape, the public prosecutor may show that the woman on whom the assault was made complained of it to her friends? *It is simply because such a course would be natural if the crime had been committed, but very unnatural if it had not been. But her natural impulses would prompt her to tell all the details of the transaction.*"

6 *A. L. R.,* page 1018, states:

> *"When a female is indecently assaulted or ravished, it is expected that she will follow the natural impulse of a virtuous woman under such circumstances, and make an outcry, and also complain of the wrong done her at the first reasonable opportunity."*

So in *People v. O'Sullivan,* 104 N. Y. 481 (58 Am. Rep. 530), the court said:

> "A disclosure in a case of rape has no legal value whatever unless it is the natural result of the horror and sense of wrong which would prompt every virtuous female to make outcry at the first suitable opportunity."

So in *Champagne v. Hamey,* 189 Mo. 709, the court said:

"An outcry and resistance are important elements of evidence, and a want of these circumstances, where they may reasonably be expected, go far to disprove the charge of rape * * * and a concealment of the injury, where there is an opportunity for early disclosure, may lead to a like inference. The evidence, as a whole, tends strongly to show that this is one of those cases where there has been a mutual gratification of desires and passions, and that *the notion of force on the part of the man, and want of consent on the part of the woman, is an afterthought. No disclosure was made by the woman until discovered to be pregnant,* and the first charge of force was made more than a year after the alleged outrage."

But the Vargas woman made no complaint whatever for five months after the alleged attack.

D.

THE RULE CONCERNING THE EFFECT OF FINDINGS OF LOWER COURTS MADE ON CONFLICTING EVIDENCE WHERE THE WITNESSES ARE EXAMINED IN OPEN COURT IS NOT APPLICABLE HERE. THE RULE HAS NOTHING TO DO WITH THE APPLICATION OF LAW TO THE FACTS. WHERE THERE ARE NO FINDINGS OR OPINION THE CASE ON APPEAL IS A CASE DE NOVO.

1. The Circuit Court of Appeals erred in assuming this to be a case where appellate courts refuse to review findings of lower courts based on conflicting facts.

The Circuit Court of Appeals rendered its opinion primarily upon the ground that the Vargas action belonged to the class of cases where appellate courts refuse to review findings of trial courts based on conflicting testimony. At another part of this brief we

shall discuss in detail the opinion of the Circuit Court of Appeals. The above reason assigned by that court makes it necessary to examine this phase of the law. Any careful consideration of the law shows that it is not applicable in this case.

From the earliest times the Federal Appellate Courts have recognized the principle that findings of fact made by trial courts should not lightly be disturbed. This salutary principle was applied by District Courts in the consideration of the findings of Commissioners as well as to the findings of courts themselves.

The Albany, 48 Fed. 565;
Parsons on Shipping and Admiralty, 215;
The Providence, 98 Fed. 133.

It was dependent on the principle that a Commissioner or a judge was to be presumed correct if, having actually heard two witnesses give conflicting testimony he specifically upheld the testimony of one witness. This being the basis of the rule it did not apply to cases where the testimony was taken by deposition.

Lazarus v. Barber, 136 Fed. 534.

The rule was applied in the early days when the District Courts were the only Federal Courts of first instance, and the Supreme Court the only Appellate Court.

The Marcellus, 1 Black 414, 17 L. Ed. 217.

It was applied when the Circuit Courts were created and given jurisdiction over the District Courts, and it was adopted when, in 1891, the present Circuit

Courts of Appeal were created and the appellate powers of the Circuit Courts abolished.

Literally hundreds of opinions have been written stating that

> "findings of fact by the District Court on conflicting evidence where the witnesses were examined in open court will not be reversed unless manifestly contrary to the evidence." (*American & Eng. Enc.*, Vol. I, p. 1359.)
>
> *The Sampson*, 4 Blatchf. 28;
>
> *Levy v. The Thomas Melville*, 37 Fed. 271;
>
> *The Captain Weber*, 89 Fed. 957.

As is the case with many general rules, the history and the meaning of this principle have sometimes been forgotten or misunderstood, and sometimes its language has been garbled. Like every such axiom, rightly applied it is productive of good law and sound justice, but carelessly applied or used to avoid the necessity of examining the facts of a case it can produce great injustice. If two witnesses appear before a District Court and give conflicting evidence a specific finding by the District Judge should be given great weight. But this does not mean that when a District Judge gives a decision in a case involving both facts and law, and does not state, or in any way indicate, the grounds he decides the case on, the upper court is to simply wash its hands of all responsibility by stating the case to have been one involving facts. That essentially is what the Circuit Court of Appeals did in the present case.

2. This case presented as much, if not more, of a question of law as of fact.

The statement of fact and the discussion of the law already made show that this appeal presents as much, if not more, of a question of law as of fact.

If what she said was entirely true, and if whenever she told conflicting tales the one most favorable to such a claim were selected, what then? In that event she would have no action for rape unless the fundamental law set out by the Supreme Court in *Mills v. United States (supra)*, and every other leading case on the subject, is to be uprooted and set aside. And this is primarily because she testified that she did not resist by effort or by scream, that she did not complain, but very obviously received at least his formal attentions for months afterwards.

But if this case presented that which it does not, a pure question of fact, what then? Is the rule regarding findings applicable? It is not. And it is not applicable because there were no findings or opinion and the very foundation of the rule disappears. This subject was covered in *The City of New York*, 54 Fed. 181.

There the court held that although the opinion of the trial judge in an admiralty case will not be disturbed on appeal as to questions of fact depending on the credibility of witnesses examined in his presence unless there is a decided preponderance of evidence the other way, his decision rendered without an opinion cannot be reviewed conformably with that rule, and on appeal therefrom, the Appellate Court will decide such questions of fact as best it may on

reading the record. In that case the Circuit Court of Appeals dealt with the question as to whether there is any application of the findings rule to a case where there is no opinion. The court decided in the negative and used the following language:

> "The learned district judge who heard this cause in the court below did not express any opinion in deciding it upon the facts or law of the case, and we are wholly uninformed of the reasons which led him to conclude that the libelants were entitled to recover. In controversies involving questions of negligence there is usually less difficulty in applying the rules of law to the facts than in ascertaining what the facts really are. In the present case the findings of the trial judge, in whose presence the important witnesses for the parties were examined, would have been most persuasive with this court in determining the facts, and probably would have been controlling, because the testimony is conflicting, and its weight and force depends upon the credit to be given the witnesses. The demeanor of the witnesses is a material and important part of the evidence, which cannot be sent up with the record; and, because this is so, the rule prevails in appeals in admiralty that the opinion of the trial judge will not be disturbed upon questions of fact, depending upon the credibility of witnesses who were examined in his presence, unless there is a decided preponderance of evidence the other way. Under the present circumstances, we must decide all questions of fact depending upon the credibility of witnesses as best we may upon reading the record.
>
> "It has been urged for the appellees that the decision of the district judge, without an opinion, is equivalent to the general verdict of a jury upon the issues of fact, and is necessarily a decision in favor of the libelants upon all litigated questions of fact necessary to a full recovery. We cannot for a moment assent to this proposi-

> tion. How can a reviewing court know what question of fact entered into the decision until it is informed what the judge decided as matter of law? We can hardly suppose in this case that the learned judge regarded the steamship as an insurer of the safety of the injured tug; but if he did, in the view which we take of the law, his decision could not involve any finding upon the most essential facts of the case."

It is realized that it is a difficult task for any Circuit Court of Appeals to consider a case absolutely *de novo*. However, it is a no more difficult task than it is for the litigant who has a case decided against him where he has no knowledge as to the real ground on which the case was decided. The litigant is far better off in a trial before a jury because there, at least, the judge must give instructions. Where the court simply decides a civil action with no opinion and no findings the court may be deciding it on a ground which is absolutely contrary to every conception of law. In spite of this fact, under the decision made by the Appellate Court in this case, regardless of the real ground for the decision of the judge, the Circuit Court of Appeals, if facts enter into the case at all, will affirm the judgment. The language by Wallace, C. J., in the *City of New York (supra)* states:

> "How can a reviewing court know what questions of fact entered into the decision until it is informed what the judge decided as matter of law."

In this particular case, if we are to judge from the rulings which the court made, the District Court thought the question of liability turned to a large

extent on whether or not this steward Blanco was the father of the child. As the assignments of error show, the court again and again admitted evidence of alleged statements by Blanco tending to show that he was interested in the welfare of the child. It is obvious that such evidence is not evidence which should properly result in the Panama Mail Steamship Company being held liable for rape. Yet this theory of the case, if we are to judge from the rulings referred to in the assignments of error, was exactly what was in the judge's mind.* How, then, is this Circuit Court of Appeals, or any appellate court, to state exactly the grounds on which this case was decided, and how can it reasonably refuse to examine the testimony taken in the court below?

E.

CONCLUSION.

No one who practices in the United States courts can view the present congestion of their calendars without some feeling of dismay. The vast number of cases, largely brought about through the increase of federal criminal statutes, has created a situation which is hard on litigants and their counsel, but more especially hard on the judiciary. This is particularly

---

*As an instance of these rulings indicating the thought of the District Court:

"Mr. HUTTON. Did Blanco on that occasion say that he would get a divorce from his wife, that he had not any cause for divorce against her?

Mr. THACHER. I would like to object to that. Whatever that may be against Blanco certainly it is not relevant against the Panama Mail.

The COURT. Overruled." (Julian, 162.)

so in large seaport cities like San Francisco. Undoubtedly in time the condition will be remedied. It is only natural that all concerned in the welfare of the courts desire their labor to be minimized, provided the ends of justice are preserved. An obvious course for an over-worked court would be to cease to write opinions, and to do no more than enter judgments in civil cases. Any study of such a line of procedure shows, however, that this simple method of saving labor could not do otherwise than ultimately demoralize civil litigation and sap and destroy the prestige always enjoyed by the United States Federal Courts. If, in addition to a policy of merely entering judgments in the District Courts, the Circuit Courts of Appeal should affirm all cases in which there was any possibility of any question of fact having entered into the decision of the case, a worse condition could hardly be created.

Squalid and sordid as this present action is, it clearly shows what the results of such a course would be, if generally adopted in the Federal Courts. In the crush of litigation, if opinions and findings are abandoned, many cases will not receive any due consideration. With hundreds of actions almost floating through the courts, some will be decided without any real examination or weighing of the facts and law involved. This lack of due consideration will be even more likely where the decision is not rendered until long after trial. Then it may readily be decided upon the merest recollection, totally at variance with the true facts and law involved.

The present case may be taken as an example. We do not think that an identical case to this case, decided by the same judge, in the same court, would possibly have resulted in a judgment for the plaintiff ten years ago. The court then would have had time to examine the law and the facts and to write an opinion. The mere writing of a considered opinion would seemingly have destroyed all chances of success of the plaintiff, because it would have brought home to the judge deciding the case the true facts and what the law involved is. The only hope of the plaintiff in this action was that because of the general pressure of work upon the court due to a crowded docket the law involved and the details of the facts would not be considered, and that if decided without due consideration sympathy for the position of an unmarried mother would receive undue weight. Had an opinion been written by the court it would presumably have recognized that the woman had absolute protection at hand, and that one scream would probably have been heard by at least a hundred persons scattered around on the vessel. It would have recognized the complete lack of concern shown by the woman, the going to breakfast and the failure to complain to anyone. It would have recognized the friendly relations of Blanco and the Vargas family, the woman's introduction of Blanco to her brother, the presumed courtship, the various gifts and the ultimate discovery that Blanco was married and that Miss Vargas was in a delicate condition. It would have recognized the obvious perjury of the Vargas woman in testifying on one occasion that she gave a ring to Blanco to keep for her and her later testi-

mony that he stole it. It could not well have ignored the testimony of the absolutely independent witness, Angela Villavicencio, that she was in the stateroom, the roommate of Miss Vargas, and that no such attack ever occurred. The writing of such an opinion would have been a guarantee against the court entering a judgment without a careful weighing of the evidence and the law involved. Had such evidence and law been considered it seems incredible that a judgment would have been given for the plaintiff. This is for the reason that such an opinion, recognizing the evidence above cited, would not only be at total variance with *Mills v. United States (supra)*, and all other leading cases on the subject, but would have been so contrary to the obvious truth that no court would ever give it.

What has been said of the District Court applies also to the Circuit Court of Appeals. The same type of congestion which was undoubtedly responsible for the decision in this case by the District Court was also responsible for the decision in the Circuit Court of Appeals. We have already discussed the reasoning of the opinion of that court, and its conclusion taken from the mere type of case, that the appeal involved a question of fact and that therefore the upper court would practically as of course affirm the decree of the lower court. Had the upper court found time to examine the record it would have seen, as we have pointed out, that not only was the question involved one very largely of law, but also that the rule concerning presumed correctness of findings did not apply because there were no findings. It woud have

recognized that even so far as the facts were concerned the situation was dealt with in the *City of New York,* 54 Fed. 181, and that the upper court had before it a case where it was obligated in justice to the litigant to consider all the testimony and decide the matter as a case *de novo.*

It was with hesitancy that we petitioned the United States Supreme Court to grant a writ of certiorari in this action. We felt that a case of such an unsavory type, involving a squalid affair between a Filipino and a Central American native was not one with which the highest court should be troubled. At the same time we saw our client, the Panama Mail Steamship Company, held liable for a judgment arising from a cause for which it was in no way responsible, and we saw this gross injustice, obviously caused by the evident failure of the lower courts to examine with care the facts and the law involved. In some court, original or appellate, the Panama Mail Steamship Company seemed entitled to such an examination. And unless the whole law on the subject is to be changed and the obvious character of this brazen attempt to collect is to be entirely lost sight of, such an examination, if had in any court, would, in our opinion, have blasted the hopes of the plaintiff for a judgment. But we had in mind more than this one particular case. Here is a striking proof of what injustice will result if lower courts write no opinions and if Appellate Courts, by a distortion and misapplication of the findings of fact rule, affirm all cases in which some party may have raised a question of fact. To us this case presents

a favorable opportunity for reiterating the exact nature of the finding of fact rule and emphasizing its limitations, and that it does not apply where the District Courts render no opinion and make no findings, and that in no event does it affect the obligation of the upper court to examine all questions of law involved in the record. If the District Courts are to write no opinions and the Circuit Courts are to take the same view of appeals which the Appellate Court took in the present case, a condition of untold seriousness will arise in the Federal Courts because litigants before such courts will only be receiving a small part of the consideration to which they have always felt entitled. And should such a practice prevail such an obvious miscarriage of justice as is brought home by a study of the record in the present case may very well be the rule rather than the exception in future litigation.

We respectfully submit that the judgment in the present action should be reversed.

Dated, San Francisco,
March 15, 1930.

Respectfully submitted,

THOMAS A. THACHER,
Attorney for Petitioner.

THACHER & JONES,
HARRISON A. JONES,
W. KEVIN CASEY,
Of Counsel.

Due service and receipt of a copy of the within is hereby admitted

this_____day of March, 1930.

_____

Attorney for Respondent.

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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1929

No. 425

PANAMA MAIL STEAMSHIP COMPANY
(a corporation),
Petitioner,

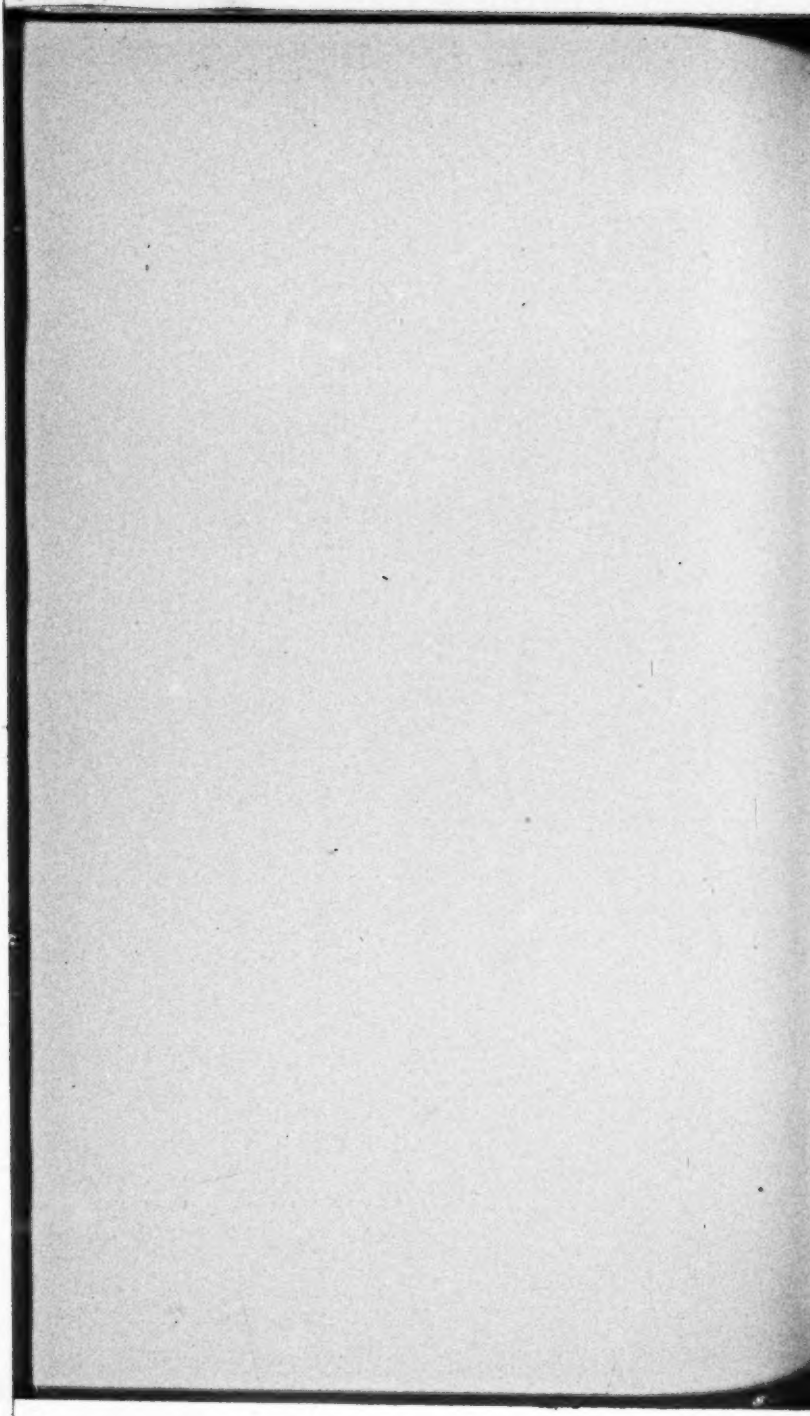
vs.

ERNESTINA ISABELLE VARGAS,
Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

To the United States Circuit Court of Appeals
For the Ninth Circuit.

H. W. HUTTON,
Pacific Building, San Francisco,
Attorney for Respondent.



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RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

To the United States Circuit Court of Appeals For the Ninth Circuit.

To the Honorable William Howard Taft, Chief Justice of the United States, and to the Associate Justices of the Supreme Court of the United States:

The respondent respectfully submits the following brief in opposition to the granting of a writ of certiorari herein, and as grounds of opposition states.

I.

THE LEARNED CIRCUIT COURT OF APPEALS READ THE RECORD HEREIN, TRIED THE CASE ANEW, AND THE PRESUMPTION IS THAT BOTH THE TRIAL COURT AND THE APPELLATE COURT DECIDED CORRECTLY.

The sole reason assigned for granting the petition herein is, that counsel for petitioner wishes this court to decide that the learned Circuit Court of Appeals did not perform its duty.

The opinion of that court (R. 297-299) shows that the record must have been carefully read, and the claim urged by counsel for petitioner, that an Appellate Court is not bound by the findings of a trial court on the credibility of witnesses testifying before the trial court when the testimony is conflicting, is in conflict with the case of *The City of New York*, 54 Fed. 181, cited by petitioner itself in its petition. (Pages 20-21.) The Circuit Court of Appeals for the Second Circuit saying (Pet. 21):

> *"The demeanor of the witness is a material and important part of the evidence, which cannot be sent up with the record; and, because this is so, the rule prevails in appeals in admiralty that the opinion of the trial judge will not be disturbed upon questions of fact, depending upon the credibility of witnesses who were examined in his presence, unless there is a decided preponderance of evidence the other way.*
>
> Under the present circumstances, we must decide all questions of fact depending upon the credibility of witnesses as best we may upon reading the record."

That is exactly what the Circuit Court of Appeals did herein, it read the record and decided the law as to civil rape, decided that—

> "the overwhelming weight of the testimony clearly established the fact"

of sexual intercourse (R. 298) and found,

> "First, that the chief witness for the appellant was guilty of false swearing, and, second, that the girl who occupied the stateroom with the appellee during the greater part of the voyage was not present when the outrage was committed;" also that "the defense itself was weak."

We do not know what more the learned Circuit Court of Appeals could have done.

The trial court in its decree said (R. 282):

> "that for and by reason of the matters set forth in the pleadings and shown by the proofs herein, that libelant have and recover, etc."

That is in effect a finding that everything in the pleadings and proofs that will support the decree were true, and the court could not have said any more in any opinion it might have written.

The libel alleged rape and nothing else (R. 7), the testimony shows rape and nothing else, and we cannot understand the following on pages 12 and 13 of the petition herein:

> "There is not the slightest suggestion in the record as to whether the District Court gave this woman $10,000.00 because it thought it was a case of rape, or seduction. * * *"

Petitioner makes no attack on the form of the decree, the order was dated December 15, 1928, and reads (R. 281, 282):

> "It is ordered that libelant have judgment for ten thousand (10,000) dollars, with costs of suit.

Let plaintiff's counsel prepare decree accordingly."

Rule 40 of the Rules of the United States District Court, for the Northern District of California, in Admiralty, which has the force and effect of law, reads:

> "Within five days after the making of an order for the entry of an interlocutory or a final decree the proctor for the prevailing party shall prepare the decree and serve the same upon the proctors for all the other parties or *res* and shall file the original in Court. The other proctors shall thereupon have five days within which to serve and file proposed modifications of the decree so filed. If no modifications are filed within said five days, the decree on file, if approved by the Judge of the Court, shall be by him signed and filed. If any proposed modifications of the decree are filed within the specified time, the Judge of the Court, before signing the decree, shall order such modifications to be made in the decree as he may deem proper. * * *"

The printed record does not show service of the proposed decree on the proctors for petitioner, so we have to rely on the presumption "that the law has been obeyed." The fact is, it was served on December 17, 1928, and petitioner made no objections to it, so it acquiesced in its form. It is dated December 24.

It was within petitioner's power up to that date and up to December 29, the date of its notice of appeal, to suggest findings, if it wished them; but it failed to.

Petitioner knowing all the time and now that there is not a suggestion of anything but rape in the pleadings or evidence taken in court, except the erroneous

conclusions of Commissioner Krull, that have nothing to do with this case, is not harmed.

Section 269 of the *Judicial Code* reads in so far as applicable herein:

> "* * * On the hearing of any appeal, certiorari, writ of error, or motion for a new trial, civil or criminal, the court shall give judgment after an examination of the entire record before the court, without regard to technical errors, defects, or exceptions which do not affect the substantial rights of the parties."

Seduction does not enter into the case at all, and never did, as its sole witness on the assault, its second steward, testified that he had "never either talked or had any relations of any kind" with respondent. Seduction requires some conversations and some relation with the complaining party; it cannot exist without either or both, so counsel should at least be clear on the basis of the decree, the libel being for rape, the testimony overwhelmingly showing it, and its own witness showing conclusively that there could not have been any seduction.

Miss Vargas the respondent was on the witness stand all of the day of September 12, 1928 (R. 21-22), and resumed the stand on September 13th. The court took part in the examination itself (R. 87, 89-91), and signed a decree for damages for $10,000.00 for rape as there is nothing but rape in the case.

The learned Circuit Court of Appeals followed the following decisions herein:

The Richmond, 103 U. S. 540;

The Conqueror, 168 U. S. 104, 123;

The J. G. Gilchrist (2nd Cir.), 183 Fed. 379;
Monongahela R. C. S. C. Co. (6th Cir.), 196 Fed. 375, 379;
Bixby v. Deeman, 54 Fed. 718;
Norton v. Larney, 266 U. S. 511-518.

II.

UNDER THE ADMISSIONS OF THE PETITION THERE IS NO LONGER ANY CONFLICT OF TESTIMONY HEREIN, AND RESPONDENT'S TESTIMONY STANDS UNCONTRADICTED.

But two witnesses, necessarily, testified to the actual assault, the respondent and Blanco the second steward and assaulting party.

The Appellate Court finds Blanco guilty of false swearing, and the petition herein (p. 31) states:

> "We do not deny that this steward is guilty of false swearing."
>
> "He is a Filipino and from the testimony in this case we think that he lied to us."
>
> (Page 32.) "We will freely admit that this witness did not tell the truth to us or to anyone else."

These admissions establish the correctness of the judgment herein.

The record shows that on March 15, 1928, Blanco was examined on a criminal charge of rape; one witness only, Miss Vargas, testifying through three interpreters who could not understand Spanish (R. 92, 205); petitioner was represented there (R. 203) and it was arranged that respondent should go down to petitioner's office and some financial arrangement should be made. (R. 196, 197-201, 202, 203, 204.)

The next day, respondent with her brother and Mr. Amaral went down to petitioner's office at No. 2 Pine Street (R. 125, 136, 137), and were there told that Mr. Shenick petitioner's port steward was handling the case (R. 137) and they were told to go to Pier 46, which they did, and met Mr. Shenick. Blanco was brought up from the vessel, and was told by Mr. Shenick that he could not stay in petitioner's employ unless he took good care of respondent and the child that was coming that was his. Blanco said he was willing to do that and it was agreed that when the vessel came back May 18th some of Blanco's wages were to be applied to petitioner's relief, Blanco saying:

"Yes, I am sorry for what happened, and I will take care of her." (R. 127.)

(R. 117.) "Blanco said before that he was awful sorry for what he did to my sister."

The writer coming into the case that day, advised them to go to petitioner's office (R. 129) as Commissioner Krull had advised him. (R. 204.) He proceeded no farther, but started this case as he considered it compounding a felony if consummated.

Blanco further wanted to furnish the money for a criminal operation (R. 147) et seq.

He also made statements to another lady, Mrs. Julian, practically to the same effect a few days before his deposition was taken. (R. 160, 161.) (R. 220.)

May 31, 1928, he appeared in counsel for petitioner's office and his deposition was taken, and he testified (R. 211):

"Q. Well, after they came aboard, just tell us when you talked to Ernestina during the voyage up to San Francisco?

A. I never talked to Ernestina at all; just pass there in the saloon and salute me; just say 'Good-morning.'

Q. At any time during the month of October, 1927, did you go into the room, stateroom 31, while Ernestina was in there?

A. No, I never seen her in the room.

Q. Did you at any time have any relations of any kind with Ernestina?

A. No, sir."

Counsel states, as we have heretofore pointed out:

"He is a Filipino and from the testimony in this case we think that he lied to us."

But do not state which time, whether it was in petitioner's office March 16, 1928, or in its counsel's office, May 31, 1928. The Court of Appeals found it to be the latter time so respondent stands uncontradicted herein and corroborated by the admissions of the party who made the assault, made in its business office March 16, 1928.

We do not understand the strictures on Filipinos as a race on page 31 of the petition herein, but think the inquiry that if they are as bad as pointed out, why does petitioner employ them is pertinent, and make the statement that it seems inexplicable why petitioner continued Blanco in their employ after knowing the character he was. He was in its employ in the same position September 13, 1928, while the case was on trial. (R. 195.) It must be presumed that respectable women travel on their vessel "Ecuador."

Admitting that Blanco was untruthful, as the Circuit Court of Appeals found and petitioner in its brief admits, there is nothing left in this case for a court to pass upon.

The unbroken line of Federal and State Court decisions is that the common carrier is liable for assaults like this.

Steamboat Co. v. Brockett, 121 U. S. 637, 645.

> "A common carrier is bound as far as practicable to protect his passengers, while being conveyed, from violence committed by strangers and co-passengers, and undertakes absolutely to protect them against the conduct of its own servants engaged in carrying out the contract."
>
> *Stewart v. Brooklyn and Crosstown R. R. Co.,* 90 N. Y. 588.

> "If the carrier places lady passengers under the protection of libertines, who insult or assault them, * * * he should be responsible for the injury. This rule rests upon sound reasons and is abundantly supported by authority."
>
> *Kansas City, Southern Ry. Co. v. Willsie,* C. C. A. 224 Fed. 908.

We could cite hundreds on the same point if necessary.

The sole ground of petitioner's complaint herein is, it claims that the lower court made no findings, and intimates the Appellant Court did not examine the evidence. It is wrong in both claims.

Women sometimes have to travel alone, and Congress and the courts have done all that they can to protect them. Going on board of a vessel is like going

into a new world, and if seasick and weak from lack of food, they are not normal beings. Congress has made rape on the high seas a capital offense, and it has also passed the following statute. Sec. 280 of the Criminal Code reads:

> "Every master, officer, seaman, or other person employed on board of an American vessel who during the voyage, under promise of marriage or by threats, or the exercise of authority, or solicitation, seduces and has illicit connection with any female passenger, shall be punished by imprisonment not more than twelve months, or a fine not more than one thousand dollars; but subsequent intermarriage of the parties may be pleaded in bar of conviction."

This second steward was married and had four children. (R. 219.)

If it was seduction an action for damages against the shipowner would still lie, but it was rape pure and simple. And this was a civil action for damages for rape and not a criminal prosecution.

Respondent caused the arrest of the second steward. The U. S. Commissioner testified:

> "Then there is a note here, U. S. Attorney suggested that the complainant make complaint to the state court on account of her condition."

There is no explanation of why she should have been sent to the State Court. The Federal Courts had jurisdiction.

The U. S. Commissioner also testified (R. 204):

> "I listened to her story and it impressed me as being truthful to the extent that she had been seduced."

The Commissioner simply mistook the law.

In the trial court herein 13 witnesses testified, 7 for respondent and 6 for petitioner, and two depositions were introduced by respondent, and one that of the second steward by petitioner.

That this court may know the facts herein we give the following statement:

The evidence herein shows that Miss Vargas was a woman 24 years old (R. 12) at the time of the occurrence she complains of; that she is refined in her conduct and manner; well educated, both religiously and scholastically, the language of her testimony shows the latter, and not one word against her character can be found in the evidence. (R. 21-22.)

The evidence further shows (R. 24-25) that Miss Vargas was born in San Miguel, Republic of Salvador, and lived there all her life, she attended a non-boarding school from the time she was seven to twelve years old, and after that became an interne student at the college of Santa Techla about one hour's ride from the capital of Salvador until she was nineteen, when she went home and lived with her parents for about five years, making a little trip with her mother to the port of La Union, in 1912, about 15 years before she went on the "Ecuador." Her father is a jeweler in San Miguel, and in October, 1927, it was decided that she should come to San Francisco, for the purpose of learning the English language, taking advantage of the fact that she had a brother here. (R. 25.) Her father purchased her a ticket, gave her some money, which she deposited

with the purser when she went on board the "Ecuador" and nothing else, having it returned when she left the boat in San Francisco, and she went to the Port of La Libertad where the "Ecuador" was to arrive (R. 26-29), a brother in San Salvador, her cousin and her cousin's husband being there also, and her brother and cousin's husband went with her to the "Ecuador" in a gasoline launch, upon getting on board they went to the first person they met, Jose Blanco, who she describes as the second purser or steward. She had been assigned to stateroom 31, which was one room from the end of a corridor about 80 or 90 feet long (R. 278), her brother appears to have gone down to the stateroom with her, and they then went on deck to get her a deck chair, which her brother purchased for her, Blanco telling him where to get it. Her brother spoke to Blanco, who told him that he spoke Spanish, and that he would explain things in the dining-room to her. Her brother stayed about fifteen minutes on the vessel, and left for the shore. Blanco himself, by deposition, testifying (R. 219), speaking of her brother when on the vessel:

"Q. And he asked you to take good care of her?

A. He was recommending me to take good care of her because I was second steward.

Q. He asked you to take good care of her, didn't he?

A. Yes.

Q. And you said you would?

A. Yes, sir."

Miss Vargas became badly seasick the moment she got on board (R. 29), and so remained up to the time

the vessel arrived in San Francisco, all the witnesses agree on that. (R. 272.) She went on the vessel October 10th, about 4 P. M. and the vessel left La Libertad about from 8 to 10 o'clock on the evening of October 10th (R. 242), the steamer having at about 9:45, October 11th left San Jose her last port of call and started for San Pedro, California. Miss Vargas left the deck at about 9 and went to her room, she was alone in the room, was seasick all night, getting up twice to vomit in the wash basin (R. 31), but was unable to vomit anything but bile (R. 94), as she had eaten scarcely anything since she went on the vessel, thirty-seven hours before, and she woke about, as she thinks, five A. M., having no watch she was not sure about the time, about from 6 to 6:30, she unlocked the door for coffee. She also testified that she had a great deal of nausea. She testified (R. 31):

> "A. I left my bed for the purpose of opening up the door, as I could not go upstairs to get coffee, I thought it was better to have it brought there." (R. 32.)
>
> "Q. Did you try to dress at that time?
> A. Yes, but I could not, because I could not sustain myself, and I returned to bed."

Blanco entered her room at about 6:30 to 7 a. m. (R. 32, 35), and first asked her how she felt from the seasickness, she replied quite sick, he then pushed the door shut, and took hold of one of her hands, which she withdrew, and then commenced to use love phrases to her telling her that he had sympathized with her very much from the moment she came aboard the ship and had commenced to like her quite a bit.

She asked him to do her the favor to keep still, and he then got close to her and took her two hands, she struggled to loosen herself, and he then raised her two hands above the level of her shoulders and put them against the pillows. (R. 32.) She kept struggling, telling him that if he did anything to her he would greatly repent it (R. 88), he kept kissing her and finally held one of her hands with one hand and with that arm held the other arm down, and with the other hand evidently unbuttoned his pants and in spite of all she could do had sexual intercourse with her, by that time her struggles had got her over to the side of the bed, with her legs from about six inches above her knees over the side of the bed, he forced her legs apart by inserting one of his legs between hers and got in the center. (R. 91.)

There is not a shred of evidence that anyone was near that room at the time other than Miss Vargas, and Blanco, it does appear that the twenty or more bell-boys, bath-boys and waiters of whom Blanco was in charge go on duty at 6 in the morning and the first thing they do is to scrub the floors of the dining-room, wash the paint work down, wipe the dust down and polish brass. (R. 270.) Room 31 was immediately below the dining-room deck. (R. 278.) After all the scrubbing and cleaning is done, the waiters get ready for breakfast, which is at eight o'clock, after that they clean up the rooms. (R. 277.)

There were but few passengers on the vessel. The vessel had only about half of her complement of passengers. (R. 279.) Respondent's Exhibit 2 (R. 48)

shows 55, and her complement was 109. (R. 276.) And the only passengers in the corridor that the stateroom Miss Vargas occupied that appear in the record, was a Chinaman and his family that joined the vessel at Gautemala, but changed on account of the heat. (R. 94, 95.)

She was interrogated at length as to why she did not cry out, and testified (R. 34):

"A. Because at that particular moment I did not have courage to cry out, and not knowing who would come to my aid, and my voice might not have been heard, on account of the noise that there is in the morning aboard ship, I did not think it possible to be heard."

(R. 87):

"A. Because it didn't occur to me, I did not know that that man entered with bad intentions. What I did was to withdraw my hand forcibly.

A. Because at that moment it did not occur to me to cry out; the only thing that occurred to me was to defend myself.

Well, I moved my body and did everything that was possible to loosen my hand."

(R. 33):

"A. In the first place I did not holler out, because it did not occur to me, because I was afflicted with what was happening."

(R. 34):

"A. Besides I was telling him to leave me alone, to loosen his grip.

A. I don't know. All I do know is that there was an opening that led to the barber-shop, which was some distance away from there, but at that time in the morning I didn't know whether it was open."

(R. 87):

"Because I did not think he came in with bad intentions because at the moment of entering, he asked me, 'Miss, how do you feel, how are you.'"

(R. 88):

"Q. Did you strike him in the face, or scratch him?

A. I did not have the chance, because my hands were held."

As to the unlocking of the door, she testified (R. 79):

"Q. If it was for coffee, why didn't you accept the coffee that Blanco, when he first came into the room, offered to give you?

A. Because he offered to give me coffee, and I knew that a messboy would bring it, and I did not want to accept any favors from him.

Q. Why didn't you want to accept any favors from him, if he was the second steward, and you never had a word with him, except going up the gang plank?

A. Up to that time I did not know he was second steward."

After Blanco had accomplished his purpose, she got up and cried.

(R. 71):

"A. I didn't say anything; I was so completely exhausted."

(R. 35):

"After the act, he saw me cry, and he told me not to worry, that he would marry me.

A. That if I wanted to, we would get married in San Pedro.

A. He says for me to say nothing to anyone, that he would be of service to me, that I would

not get any advantage through *it, because they would not pay any attention to me.*
I said nothing; I only cried."

The vessel arrived in San Francisco October 21st, and her sister-in-law met her on the steamer and took her to her home. Her brother missed her as he was attending to some trunks or papers or something for her. He went out home when Miss Vargas handed him a letter from their father that she had brought up, in which he stated that he was sending a ring to him by his sister; the brother asked for the ring and Miss Vargas told him a man on the ship had taken it away from her, the brother, his wife and Miss Vargas then went down to the ship to get the ring. There is nothing in the record showing they had any other purpose in going. The ring was on her finger at the time of the assault, but being loose fell off to the floor in the struggle, and Blanco picked it up, "gathered it," as she testified (R. 37), and carried it away with him. Upon their arrival at the vessel Blanco took the ring off his finger and handed it to the brother. Blanco was not produced at the trial, his deposition was taken, when he testified (R. 224, 225) that he never had a ring, never saw a ring, and did not hand a ring over on the above occasion, although three witnesses produced in court testified that he did.

The brother, Ralph Vargas, testified (R. 111):

"A. Yes, he served liquor there and I said, 'I thank you, I want you to come out for dinner to my house,' because I didn't like to get anything without paying for it."

The brother, and his wife were in complete ignorance of the assault for some time after that, Miss Vargas testifying she did not have the valor to tell him as she was afraid it would shock him too much. (R. 39.) He testified that they had always been very strict in his family and she was afraid he would throw her out. (R. 116.) She further testified (R. 74) that she did not know she was in that condition until they took her to a doctor (R. 38):

> "A. No, I did not want to tell them, because I did not want to cause a terrible impression, because I had come especially recommended to them in San Francisco."

There were some exchanges of courtesies between the brother and his wife and Blanco, but all the testimony shows Miss Vargas had nothing to do with them. The brother testified (R. 106) about going out to a cafe:

> "A. We took my sister along because we could not leave her in the house by herself."

The testimony shows that she never spoke to Blanco at any of those times, and the visits between Blanco and the Vargas family seem to have been confined to two.

In March, Miss Vargas had to tell someone of her condition, and being afraid and ashamed to tell her brother, she went to a friend of the family (R. 39):

> "I told Amaral I didn't know what to do, that I am in such a condition, that I would like to leave this place and go somewhere else, because I am afraid to shock my brother too much."

Shortly before that Miss Vargas complained about not feeling well to her sister-in-law who took her to a doctor. (R. 144.) When Miss Vargas came out of the doctor's room crying (R. 144), that was the first time her sister-in-law knew anything about the matter; her husband did not know then. (R. 146.)

The hearing was had before Commissioner Krull, and it seems they had a great deal of trouble about getting an interpreter, they had three, none appears to have been able to interpret Spanish correctly. (R. 54, 92.) Commissione Krull (R. 205):

> "A. She could not speak English, and we had quite a little time geting someone to interpret, and we finally called upon Mr. Grant, a bailiff of the court, who talked Spanish, and he came in and did the interpreting."

The vessel went away; this case was commenced about a week after the foregoing. The vessel returned and a day or so afterwards Blanco called up Mrs. Julian, the mother of Mrs. Vargas, on the phone, went out to her house and talked to her quite a while about the whole matter, told her that he was very sorry, that he wanted to arrange everything amicably with her because there was no need for any lawyers nor any litigation; that he could pay the hospital expenses; that if the child was a girl to give it the mother's name, if a boy his name; that he was sorry for what occurred, because he was a married man, but if Miss Vargas would wait he would get a divorce and get married to her, but that he did not have any case or reason to get the divorce, etc. (R. 156, et. seq.)

Blanco was cross-examined twice and a foundation was laid for impeachment on all of the matters that evidence was introduced on, and he denied everything, contradicted the statement of Commissioner Krull, Mr. Grant, and everyone else that testified for the libelant, seven in all.

Mr. Shenick went on the stand and contradicted Commissioner Krull, Mr. Krull's records, Mr. Grant, Mr. Amaral and Mr. Ralph Vargas.

The Christmas card printed at the foot of page 30 petitioner's brief is not in evidence, and Miss Vargas did not testify that she received it from Blanco; all she testified was that it came to the house, her counsel wished to introduce it for further impeachment of Blánco, but concluding he could not prove the handwriting on it, after a visit to the Shipping Commissioner's office and examining Blanco's signature on the shipping articles, he dropped the matter; the record shows (R. 49):

> "Mr. HUTTON. * * * I will ask to have that marked for identification because I may want to examine Mr. Shenick on it."

III.

OUTCRIES AND FAILURE TO MAKE COMPLAINTS ARE NOT A PART OF THE OFFENSE OF EVEN CRIMINAL RAPE. THEY ONLY GO TO THE QUESTION OF CREDIBILITY.

Lord Coke said a charge of rape was easy to make and hard to disprove, but he never said that fact ought to and it never has defeated justice in a proper case.

Petitioner prints an excerpt from *Jensen v. Lawrence* on page 35 of its petition, but not all of the instruction as it was given, and the Supreme Court of Washington, did not hold that what petitioner has printed was the law, but held that the defendant who had excepted to it was not harmed.

The court held the following to be the law in that case (Syllabus) *Jensen v. Lawrence,* 94 Wash. 148:

> "The evidence in a civil action for an assault and rape is not insufficient to sustain a verdict from the fact that plaintiff made no outcry, where she testified that she resisted and was overcome by force and that there was intercourse without her consent. 'Rape, Civil Liability, Evidence, Sufficiency. In a civil action for rape, the failure of the plaintiff to make an outcry, or complaint within a reasonable time, may be explained, or excused, and it is merely a circumstance which the jury may consider tending to impeach the plaintiff, *and not a defense as a matter of law.*"

The law is the same in a criminal case, Lord Coke laid down the rule a great many years ago. Parliament then fixed the time in which the complaint should be made at 40 days, then abolished that and fixed no time, and the writer adds "for the reason that time does not run against the king." At the time of Lord Coke, England had less than five million people, everyone knew everyone else in the vicinity, and travel was infrequent, just what that rule can have to do with a female passenger going aboard a vessel alone in modern times knowing no one on board and not speaking the language of the vessel has not been pointed out.

Blackstone takes up the rule, 2 Cooley's Blackstone, 1374, and divides females into two classes, one of good fame, and the other of evil fame, and holds in effect that if the complaining party is of good fame that is sufficient, but even if she is of evil fame and has made neither complaint nor outcry.

> "these and the like circumstances carry a strong but not *conclusive presumption that her testimony is false or feigned.*"
>
> Petitioner's petition herein (page 14).

As the learned Circuit Court of Appeals said herein (R. 298):

> "and that the credibility of the complaining party is for the Court or jury, in view of all the surrounding circumstances."

It is impossible to make one rule of law that will fit into all human natures, as was well said in the following case:

People v. Kuches, 120 Cal. 566, 569:

> "One person would be paralyzed by fear—and rendered voiceless and helpless by circumstances which would only inspire another with higher courage and greater strength of will to resist an assault."

People v. Slaughter, 33 Cal. App. 365, 381.

A criminal rape case.

> "It is true that her testimony should be clear and convincing, but it is for the jury and the trial judge to determine whether it fullfils that requirement."

People v. Jones, 76 Cal. App. 144, 148.

> "It is well settled that one may be convicted of rape upon the uncorroborated testimony of the

prosecutrix, if the jury believes her story." (Cases cited.)

People v. Mazzurco, 49 Id., 275, 276;

Lindville v. Green, 125 Mo. App. 290.

"but we know of no case where the testimony of the prosecuting witness has been rejected solely on this ground * * * it must be remembered that plaintiff had no mother nor any other woman sufficiently close in her confidence and friendship in whom to confide."

Page 306:

"Finding as we do, that her conduct was not necessarily inconsistent with the natural impulses of feminine modesty and virtue."

Keamer v. Weigand, 91 Neb. 50.

"In her testimony she explained that she did not think to make an outcry, and that she was ashamed to tell what had taken place."

Smith v. Hendrix, 149 Iowa, 255,

says that the woman is

"always in an embarrassing position."

State v. Miller, 191 Mo. 612.

"They seem to indicate that an outcry is a necessary essential part of the proof of this offense, whereas the failure of outcry is simply a fact tending to discredit the good faith of the charge, a circumstance only of more or less weight, depending upon the surrounding circumstances. A failure to make it raises no presumption of law that the prosecutrix has sworn falsely; it is a circumstance to be weighed by the jury. (State v. Machis, 240 Mo. 650, i. e. 661, 662) and so also the delay in making the complaint."

State v. Peters, 8 Jones, N. Car. 19-22.

"But it is nowhere held that this female instinct is so strong and unerring as to have been made the foundation of a rule of law, as distinguished from a rule in respect to evidence and the weight to which it is entitled, which is a matter for the jury."

People v. Norrington, 55 Cal. App. 103, 108, 109.

"Though the absence of such outcries may have a tendency to refute the hypothesis of guilt, it is by no means conclusive. While, from the nature of the crime, it may be expected in such cases that the utmost reluctance would be manifested, and the utmost resistance made which the circumstances of the case will allow, still, to hold, as a matter of law, that such manifestations and resistance are essential to the existance of the crime, so that it could not be committed if they were wanting, would be going further than any well considered case in criminal law has hitherto gone. (State v. Pilegge, 61 Wash. 264.)"

Baccio v. The People, 41 N. Y. 265.

"that it is so natural as to be almost inevitable, that a female upon whom the crime has been committed will make immediate complaint thereof to her mother, or other confidential friend."

Miss Vargas had no mother, and no friend on board, and Blanco had told her that if she told anyone they would not pay any attention to her, she had a right to think on that that the whole crew were as bad as he was, as to the passengers, she testified (R. 81):

"A. I did not complain to any of them in the first place, because they did not speak Spanish, and, in the second place, because they might

consider me a woman of ill or bad repute or conduct."

(R. 72):

"I decided to suffer my disgrace alone, without telling anybody."

That was her right, and both answers are those of a woman of modesty, no modest woman ever wants to tell about such things, and even the courts only expect they shall be told to a mother or other confidential friend, not to strangers.

People v. Horn, 25 Cal. App. 583.

"(Syllabus) In a prosecution for rape it was proper for the court to reject an instruction offered, by the defendant, which, if given, would have impressed upon the jury the importance of the absence of proof that the prosecutrix made complaint of the assault immediately after it occurred, as such an instruction would tend to create the impression that a conviction of the crime of rape could not be legally justified where there was not proof of immediate discovery to some third party by the prosecutrix of the fact of the assault upon her person, *which is not required by the law.*"

588:

"The fact that the prosecutrix in a case of rape might have made complaint of the assault to a third person immediately after it took place may be shown for the purpose of corroboration only."

People v. Martinez, 59 Cal. App. 121.

"As we have stated, the fact of defendant's guilt did not depend upon corroboration of her testimony, and the fact that she a female under sixteen years of age, made no outcry but concealed from others the knowledge of the act was

not material to the inquiry, provided, the jury upon sufficient evidence was satisfied that he was guilty of the act as charged."

Garvik v. The Burlington Cedar Rapids Ry. etc., 131, Iowa, 415, 418.

"While the ordinary female who has been ravished will make the fact known to her family or friends at the very earliest possible moment, complaint is not always made and we have repeatedly held that conviction in criminal cases charging rape is proper though no complaint is made."

IV.

RESPONDENT WAS CORROBORATED BY THE LAWS OF NATURE.

According to the laws of nature, which do not lie, the child was conceived on the 12th day of October, 1927, the day she testified she was attacked.

Estate of McNamara, 181 Cal. 82, 89-90.

"While the average period of gestation is generally taken as 280 days."

Collier's New Encyclopaedia, Edition of 1928, Vol. 4, page 305:

"GESTATION. In physiology, the act of carrying young in the uteras from the time of conception to that of parturition, the average time of a woman's pregnancy is 9 solar months, or about 280 days, though it may be as few as 7 or as many as 10. * * *"

She commenced to have labor pains, which undoubtedly are a part of the birth of a child on July 18th, 280 days after October 12, 1927, and the only explana-

tion of the conception is that given by her and the admissions of Blanco himself which he subsequently denied making.

In

Wharton & Stille's Medical Jurisprudence, Vol. III, page 27,

we find

> "If her intercourse has been confined to one individual, there is no difficulty in drawing a correct conclusion from the premises. * * *
>
> As a basis for that rule the period of gestation is taken at 280 days."

On page 29 there is a computation of several hundred cases from different doctors, that give an average of 269.7 days. Then a minimum duration given by Auvard of 242 days, and a maximum given by Rossie of 317 days, as follows:

Auvard, minimum	242 days
Rossie, maximum	317 days
Total	559 days
Mean	279.5 days

The child was conceived, and born, its conception was according to the average, and there is nothing in the record anywhere that points to anyone as being its father but Blanco, and his paternity of the child has never been disputed.

V.

CRIMINAL RAPE IS A STATUTORY OFFENSE. CIVIL RAPE IS ALWAYS TREATED AS AN AGGRAVATED ASSAULT AND ONLY WANT OF CONSENT IS NECESSARY.

Jensen v. Lawrence, 94 Wash., supra;

6 *American Law Reports, Annotated,* 1011 (syllabus).

"Where an assault is accomplished by lascivious conduct by her assailant, and he improperly handles the wronged female, or indulges in undue or indecent familiarity with her person, it constitutes at least an indecent assault, and if the intention is to secure carnal knowledge of the female, it will constitute assault with intent to commit rape, and where actually accomplished by ravishment, it will constitute rape, *providing the woman does not consent to the acts complained of.*

This doctrine finds support in the following cases which involve an assault of one of the characters complained of."

The foot note contains a list of authorities from a great many states of the union.

Totten v. Totten, 172 Mich., 565, 575.

"The court in its charge clearly and correctly defined assault and battery and rape, then stated that in this civil case: 'The mere fact that she did not resist to the utmost would not excuse the defendant from his unlawful acts, *if you find he had intercourse with her against her consent.*'"

The charge was held correct; authorities cited.

In the case of

People v. Bonzani, 24 Cal. App. 549,

the court says on page 558, when discussing the crime of criminal rape:

"Men often become demons on such occasions or while attempting an outrage by force upon the opposite sex."

Of course, any one is entitled to damages for any kind of an assault, the aggravated character or results thereof simply increasing the amount of the recovery.

33 *Cyc.* 1521:

"But conduct of plaintiff short of consent is no justification, and if force was used to overcome the resistance of plaintiff and she finally consented to intercourse, although not in consequence of the violence, defendant is still liable in damages for the assault."

Palmer v. Baum, 123 Ill. App. 584.

In that case the parties had been drinking together; it seems they had been drinking together, and the court stated the law to be as follows on page 587:

"The penetration of the person of the woman without her consent, although no considerable force is shown to have been exercised, it amounted in law to an assault; such an assault being clearly unlawful, force may be implied. The mere fact that the woman may have permitted appellant to, and did herself, indulge in such lascivious conduct as to almost amount to an invitation to him to do as he did, did not in law authorize or license him to penetrate her person without her knowledge or consent."

American & English Encyclopedia of Law, Vol. 33, page 1428, on resistance is as follows:

"The true rule is that the amount of resistance necessary will depend on the circumstances, such as relative strength of the parties, the age and condition of the female, the uselessness of resistance, and the degree of force manifested."

People v. Dohring, 59 N. Y. 374, 383, cited by appellant, contains the following:

> "Of course, the phrase, 'the utmost resistance,' is a relative one; and the resistance may be more violent and prolonged by one woman than another, or in one set of attending physical circumstances than in another. In one case a woman may be surprised at the onset and her mouth stopped so that she cannot cry out, or her arms pinioned so that she cannot use them, or her body so pressed upon that she cannot struggle."

Miss Vargas testified that Blanco held both of her hands, and had the weight of his body on her and he was very heavy. He was continually kissing her. How could she cry out?

What more could Miss Vargas do than is shown by the following testimony:

(R. 33):

> "A. When he saw that I was struggling to loosen myself, he took the two hands, and raising them above the level of my shoulders, he did thus, and put them up against the pillow.
>
> A. Then, having me thus with my hands, he commenced to kiss me. Then he kissed me, and as I was struggling against him he would kiss me, and I was struggling against him. I was telling him if he did anything to me he would be afterwards sorry. He would not say anything when I was struggling; he would not use many words, but he would repeat he liked me, and he liked me. As I was only in my nightgown he finally overcome me."

(R. 34):

> "* * * because every time he would get up close to me in the struggle he would kiss me."

(R. 69):

"Q. How did you resist?
A. By trying to throw him off.
Q. Did you hit him?
A. I could not; he held both my hands."

(R. 70):

"A. I resisted with all the strength I had.
Q. Did you scratch him at all or hit him?
A. No, I couldn't do anything; he had both of my hands and was lying on top of me and I was helpless."

(R. 87):

"A. Well I moved my body and did everything that was possible to loosen my hands.
Q. He had one of your hands in each of his hands?
A. Yes."

(R. 88):

"A. He grabbed my hand, and when I was finally able to withdraw my hand, then afterwards he grabbed my hand here (pointing toward the sacrum) and I managed, then, in my struggle, I was able to get to the edge of the bed.
Q. Did you strike him in the face, or scratch him?
A. I did not have the chance, because my hands were held.
A. Yes, he did hold my two hands, but not with his two hands. It was one hand (pointing, with her arm) at first he took her left arm and then took her right arm, and thrust it toward her shoulder and held it against her body. As he was very heavy (taking the interpreter's left hand) he held it at an angle, in about such a position (off the interpreter's breast); with one hand thus he would hold me, and the part of the body he would hold with his arm.

A. He had both hands most all the time, except for one moment he withdrew a hand, but I don't know whether it was for the purpose of lowering his pants or not, but that was the only time when both of his hands did not hold my two hands."

(R. 90):

"A. Almost on the edge of the bed. My legs were up, and then taking her two hands, and holding them over her thus, beyond the edge of the bed. Then, again (illustrating) placing her hands about six inches above her knees, from this part upwards, that part of the body upwards, and this part over the edge of the bed."

(R. 91):

"A. One of his legs budged my legs apart and got in the center."

(R. 71):

"A. I didn't say anything; I was so completely exhausted."

What more could she have done?

State v. Cowing, 99 Minn. 123 (syllabus):

"In a prosecution for rape, resistance of the female is of necessity an issue only as it is invoked in the proof of her want of consent which is always required. To show unwillingness her resistance must be proportionate to the occasion under the circumstances and at the time of the act complained of, in many cases there must be resistance to her utmost, *or at least to the extent of her ability.*

In peculiar cases, a less degree may be sufficient. In exceptional cases, rape may be made out without any proof of resistance."

In *Garvik v. The Burlington Cedar Rapids Ry. etc.*, 131 Iowa 415, a porter on a Pullman car assaulted a girl in the toilet on the car, and the court said (p. 418):

> "While the ordinary female who has been ravished will make the fact known to her family or friends at the very earliest possible moment, complaint is not always made and we have repeatedly held that conviction in criminal cases charging rape is proper though no complaint is made."

VI.

THE EVIDENCE HEREIN WAS OF TWO CLASSES.

A great deal of the testimony was taken for the purpose of impeaching Blanco the second steward.

And a great deal was taken to show what took place in petitioner's office; the latter is binding on the petitioner, and it was admissible as a part of a transaction that petitioner brought out itself, in the introduction of the record presented by Commissioner Krull (R. 201, 206) having introduced evidence of a part of a transaction, respondent was entitled to the whole of it.

VII.

MISS VILLAVICENCIO WAS NOT IN THE STATEROOM.

If that young lady had been actually assigned to that stateroom, this assault could have been committed if she had been absent for a time. She went into the stateroom on the night after it happened, the peti-

tioner testifying that she had asked the steward to put someone in there, testifying that she was afraid to stay there alone. (R. 36.)

It was almost a year thereafter before she and the other witnesses testified on the subject, and had evidently, and naturally, forgotten all about the time, they may have remembered the incident, but as to the date no one could be expected to remember that. That is shown by the testimony. Mr. Henry, the steward, testified (R. 271):

> A. It was either the night we left La Libertad or the next morning, *I would say,* I am not sure as to that."

That simply means he made a guess at it, and was not sure even of his guess.

> (R. 275.) "A. Yes. We put her in there the night we left La Libertad or the next morning. *Now I am not sure,* but she was in the room the rest of the trip."

Witness Lorenzen (R. 178):

> "A. I believe, after I talked the matter over, that she was a passenger from Corinto, Nicaragua, to San Francisco, a steerage passenger."

That witness had to talk the matter over with someone before he could make up his mind that Miss Villavicencio was even on the vessel.

Miss Villavicencio herself testified she left Corinto on the "Ecuador" October 8th, the fact is the vessel left on the 9th, and that she slept in the steerage two nights, and then was moved into stateroom 31 at La Libertad and that it took the "Ecuador" two and a half days to go from Corinto to La Libertad.

The fact is it is only 174 miles and took 13 hours steaming time (R. 194), so if she slept two nights in the steerage, and left Corinto on the 9th of October, it was impossible for her to have gone into stateroom No. 31 at La Libertad on October 10th. (R. 170, 171.) She also testified, twice, that the vessel arrived in San Francisco in November (R. 167, 172), the fact is she arrived in October. Mr. Mallory was in San Francisco and did not know anything about it.

VII.

PETITIONER'S AUTHORITIES.

Among the authorities cited by petitioner are the following:

Mills v. U. S., 164 U. S. 644.

A criminal case. In that case this court declined to go into the facts, but reversed the case on the following instruction:

> "The fact that all the force that need be exercised, if there is no consent, is the force incident to the commission of the act. If there is nonconsent of the woman, the force, I say, incident to the commission of the crime is all the force that is required to make out this element of crime."

On its face that instruction did not state the law in a criminal case of rape.

The following language of that case quoted in petitioner's petition

> "* * * though she object verbally, if she make no outcry and no resistance" (R. 13).

can have no application to this case, as whatever resistance there may have been in that case seems to have been equivocal. In this case, respondent's condition before the attack is described (R. 90):

> A. "I got up from the bed for the purpose of washing my face, and when *I found that I could not stand up* I then opened the door for the purpose of having coffee brought up to me."

After the attack:

> "I didn't say anything; I was so completely exhausted." (R. 71.)

People v. Benson, 6 Cal. 221, 223.

Was distinguished in:

People v. Moore, 155 Cal. 237, 240, and

People v. Norrington, 15 Cal. App. 103, 109.

In *Lind v. Closs,* the plaintiff told many inconsistent stories, the defendant went on the stand and admitted the intercourse, but claimed it was with her consent. The second steward, Blanco, was not even in court, although he was still in petitioner's employ; the presumption must be that if present in court his presence, or testimony, would have been adverse to the petitioner.

We respectfully state to this court, that the following matter found on page 5 of the petition herein is a reflection on and an insult to the learned Circuit Court of Appeals for the Ninth Circuit:

> "The judgment is not sustained by the evidence introduced before the court, and in the opinion of petitioner the judgment would never have resulted *had the record been carefully examined with a view of making careful findings to be entered by a court considering the matter de novo.*"

The opinion of the learned Circuit Court of Appeals shows that it examined the record carefully as it always does, and as it is its duty.

The following appearing on page 7 of the petition herein is untrue:

> "After the attack she went to breakfast and said nothing to anybody."

The testimony is as follows:

> (R. 35.) "I got up and went upstairs, and I sat down, I did not feel well."
>
> (R. 76.) "Q. Did you not testify, referring to the 12th, 'I left it' (referring to the room) 'about seven o'clock, when the bell rang for breakfast?' A. Yes, I left at that hour to go to breakfast, but I did not go to the dining room, I remained on deck because I could not stand up."

We respectfully submit, that as the learned Circuit Court of Appeals found

> "the overwhelming weight of the testimony clearly establishes the fact"

of sexual intercourse, and that the uncontradicted testimony herein shows it to have been a criminal assault upon petitioner, that both of the lower courts did their whole duty herein, and that nothing exists in this case but a question of fact, uncontradicted fact at this time, and that petitioner has not brought itself within any of the reasons stated in Sub. (b) of rule 38 of this court, as grounds for the exercise of the discretion of this court in granting writs of certiorari, that the decree of the trial court and judgment of the Appellate Court are overwhelmingly sustained by the law and the evidence, and that no good purpose would be

furthered by a re-examination of the case in this court.

We therefore respectfully ask that a writ of certiorari be denied.

Dated, San Francisco,
October 5, 1929.

H. W. HUTTON,
Attorney for Respondent.

Due service and receipt of a copy of the within is hereby admitted

this_____day of October, 1929.

_____

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_____

_____

Attorneys for Petitioner.

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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1929

No. 425

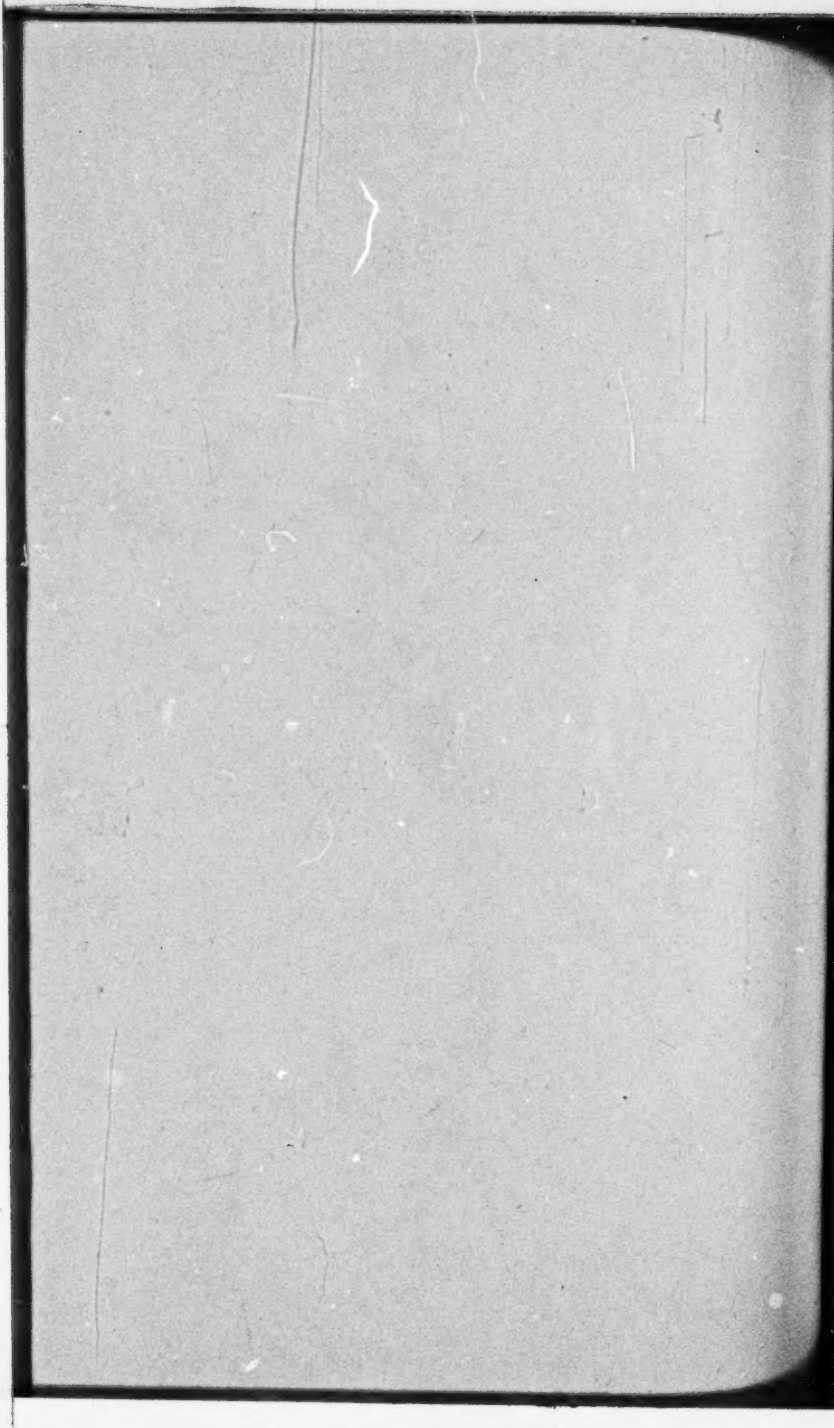
PANAMA MAIL STEAMSHIP COMPANY
(a corporation),
Petitioner,

vs.

ERNESTINA ISABELLE VARGAS,
Respondent.

BRIEF FOR RESPONDENT.

H. W. HUTTON,
Pacific Building, San Francisco,
Attorney for Respondent.



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In the Supreme Court
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OCTOBER TERM, 1929

No. 425

PANAMA MAIL STEAMSHIP COMPANY
(a corporation),
Petitioner,

vs.

ERNESTINA ISABELLE VARGAS,
Respondent.

BRIEF FOR RESPONDENT.

RESPONDENT ALSO RESPECTFULLY REQUESTS CONSIDERATION OF HER BRIEF FILED IN OPPOSITION TO THE GRANTING OF WRIT OF CERTIORARI.

I.

STATEMENT OF THE CASE.

The many inaccuracies, omissions and misstatements in petitioner's statement of the case contained in its brief, including that part of it printed on page 1, headed, "Introduction," compel respondent to make a complete statement, which we offer with an apology for its length, which is found to be unavoidable.

Briefly, however, the facts are that respondent, a previously chaste girl of the age of 24 years, well brought up and educated, went on board petitioner's vessel, "Ecuador," on October 10, 1927, at La Libertad, Salvador, for passage to San Francisco. She was a human being and petitioner took her safety in charge and under its care when she went on the vessel. She took seasick immediately upon arriving on the vessel and so continued to San Francisco. About 38 hours after her arrival on board, while she was in her room alone, nauseated by seasickness and weak from the lack of food, one Jose Blanco, or Jose Blanco Reyes, petitioner's second steward, a petty officer, entered the stateroom occupied by her in an isolated part of the vessel and criminally assaulted her against her utmost resistance—the assault being as atrocious an assault as ever was committed on a human being—by reason of which she became pregnant with child, born to her according to the average law of human gestations, 280 days thereafter, and the child resembles Blanco. (R. 45, 149.) ***Respondent did not assume the risk of that assault.***

All the expenses of the maintenance of the child, amounting to $31.00 per month, not including clothes, having to be borne by respondent, she working as a seamstress. (R. 44, 47, 49.)

There has never been any denial that he is the father of the child and we find nothing in the record that explains its conception excepting the testimony of respondent and admissions made by Blanco himself and just what petitioner depends upon we do not

know, other than it has picked out a sentence here and there in the testimony with the possible hope that it might be believed, without a word of evidence to base it on. That a weak, seasick, previously chaste girl, well brought up, voluntarily solicited sexual intercourse with a total stranger and had only spoken to, to the extent of saying in substance, "I thank you," 38 hours before the outrage was committed. (R. 60-61.)

Testimony has to be taken as a whole. We now ask the court's attention to that part of petitioner's brief marked "Introduction," as follows:

The libel was filed March 22, 1928. (R. 8.) The trial commenced September 12, 1928, and lasted three days. (R. 21, 22, 23.)

In the five months and 21 days petitioner took the depositions of the master, the steward, and the second steward of the "Ecuador," the latter being the person who committed the outrage on respondent. It had in court the purser as a witness, also a passenger, and there is not the slightest intimation in the record that it wished other witnesses or wanted any. The child was born to respondent in a hospital in San Francisco, on July 19, 1928. It was accessible to petitioner at the trial if it wanted to compare its features with Blanco's. It never asked for time to get further testimony, if it had or wanted any. So the following statement on page 2 of petitioner's brief is without any foundation,

> "and was therefore barred from obtaining evidence invaluable in such cases."

Respondent testified through an interpreter. The cross-examination was both by counsel for petitioner and by the court. She was on the witness stand a day and a half, *and the court believed her.* No one who saw her on the stand and heard her testify could do otherwise. Blanco, the Filipino steward, never at any time tried to protect himself from the charges made against him. On the contrary, as will hereafter appear, he admitted the outrage over and over again in the office of petitioner, Panama Mail Steamship Company and elsewhere and never denied it until his deposition was taken in counsel for petitioner's office, May 31, 1928.

We also respectfully state, that there is nothing in the record upon which can be based the claim that the trial court was influenced by natural indignation or anything else but the law and the facts of the case. It was submitted on briefs of both sides, held under consideration more than four months, and the only foundation for counsel's strictures upon that court must be his belief that the trial court should have decided an overwhelmingly established case of rape, rightfully or wrongfully in favor of his client.

And we respectfully submit that the reflections on the learned Circuit Court of Appeals, found on pages 5, 37, 38 and 39 of petitioner's petition herein, and the following on page 3 of its brief,

> "On appeal the Circuit Court of Appeals in a two page opinion, practically washed its hands of the case by declaring it was a decision of facts in which the upper court would not interfere,"

are uncalled for.

Judge Rudkin wrote the opinion for that court. His record as a state and federal judge on the Pacific Coast is long and honorable, and he needs no champion on that coast. He has a reputation for reading all the testimony and the whole of the contents of all the briefs in any case. The opinion he wrote herein has the merit of brevity. On its face it shows conclusively that he read the whole record, and the conclusions of the court as shown by the opinion he wrote and the judgments herein are in conformity with the decisions of this court and also the general law.

As to the facts of the case:

In the trial court herein 13 witnesses testified, 7 for respondent and 6 for petitioner, and two depositions were introduced by respondent, and one that of the second steward by petitioner.

The evidence (R. 21-24) shows that Miss Vargas was a woman 24 years old at the time of the occurrence she complains of; that she is refined in her conduct and manner; well educated, both religiously and scholastically, the language of her testimony shows the latter, and not one word against her character can be found in the evidence.

The evidence further shows (R. 24-25) that Miss Vargas was born in San Miguel, Republic of Salvador, and lived there all her life, she attended a nonboarding school from the time she was seven to twelve years old, and after that became an interne student at the college of Santa Techla about one hour's ride from the capital of Salvador until she

was nineteen, when she went home and lived with her parents for about five years, making a little trip with her mother to the port of La Union, in 1912, about 15 years before she went on the "Ecuador." Her father is a jeweler in San Miguel, and in October, 1927, it was decided that she should come to San Francisco, for the purpose of learning the English language, taking advantage of the fact that she had a brother here. (R. 25.) Her father purchased a ticket, gave her some money, which she deposited with the purser when she went on board the "Ecuador" and nothing else, having it returned when she left the boat in San Francisco (R. 37), and she went to the Port of La Libertad where the "Ecuador" was to arrive (R. 26-29), a brother in San Salvador, her cousin and her cousin's husband being there also. Her brother and cousin's husband went with her to the "Ecuador" in a gasoline launch. Upon getting on board the brother went to the first person they met, Jose Blanco, who she later found to be the second purser or steward. She had been assigned to stateroom 31, which was one room from the end of a corridor about 80 or 90 feet long. (R. 278.) Her brother appears to have gone down to the stateroom with her, and they then went on deck to get her a deck chair, which her brother purchased for her, Blanco telling him where to get it. Her brother spoke to Blanco, who told him that he spoke Spanish, and that he would explain things in the dining-room to her. Her brother stayed about fifteen minutes on the vessel, and left for the shore. Blanco himself, by deposition,

testifying (R. 219), speaking of her brother when on the vessel:

"Q. And he asked you to take good care of her?

A. He was recommending me to take good care of her because I was second steward.

Q. He asked you to take good care of her, didn't he?

A. Yes.

Q. And you said you would?

A. Yes, sir."

The only participation respondent had in that matter or conversation with Blanco prior to the assault is found in the record at pages 60 and 61, as follows: That when she went up the gang-plank Blanco asked if there was anything he could do for her, and said that he would be glad to serve her in any way, and the following occurred:

"Q. What did you say?

A. I thanked him.

Q. And that was the only other conversation you had up to that time with that fellow?

A. Yes."

Miss Vargas became badly seasick the moment she got on board (R. 29), and so remained up to the time the vessel arrived in San Francisco, all the witnesses agree on that. (R. 172, 272.) She went on the vessel October 10th, about 4 p. m. and the vessel left La Libertad at 9:45 p. m. October 10th (R. 252), the steamer having at 8 p. m., October 11th left San Jose her last port of call and started for San Pedro, California. (R. 253.) Miss Vargas left the deck at about 9 p. m. and went to her room; she was alone

in the room, was seasick all night, getting up twice to vomit in the wash basin (R. 31), but was unable to vomit anything but bile (R. 94), as she had eaten scarcely anything since she went on the vessel, thirty-seven hours before, and she woke about, as she thinks, 5 a. m.; having no watch she was not sure about the time, about from 6 to 6:30, she unlocked the door for coffee. She also testified that she had a great deal of nausea. She testified (R. 31):

> "A. I left my bed for the purpose of opening up the door, as I could not go upstairs to get coffee, I thought it was better to have it brought there." (R. 32.)
>
> "Q. Did you try to dress at that time?
> A. Yes, but I could not, because I could not sustain myself, and I returned to bed."

Blanco entered her room at about 6:30 to 7 a. m. (R. 32, 59), and first asked her how she felt from the seasickness; she replied quite sick; he then pushed the door shut, and took hold of one of her hands, which she withdrew, and then commenced to use love phrases to her telling her that he had sympathized with her very much from the moment she came aboard the ship and had commenced to like her quite a bit. She asked him to do her the favor to keep still, and he then got close to her and took her two hands; she struggled to loosen herself, and he then raised her two hands above the level of her shoulders and put them against the pillows. (R. 32, 33.) "He had both of my hands and was lying on top of me and I was helpless." (R. 70.) She kept struggling, telling him that if he did anything to her he would greatly repent

it (R. 88), he kept kissing her and finally held one of her hands with one hand and with that arm held the other arm down, and with the other hand evidently unbuttoned his pants and in spite of all she could do had sexual intercourse with her, by that time her struggles had got her over to the side of the bed, with her legs from about six inches above her knees over the side of the bed, he forced her legs apart by inserting one of his legs between hers and got in the center (R. 91) and completed his purpose.

There is not a shred of evidence that anyone was near that room at the time other than Miss Vargas and Blanco; it does appear that the twenty or more bell-boys, bath-boys and waiters of whom Blanco was in charge go on duty at 6 in the morning and the first thing they do is to scrub the floors of the dining-room, wash the paint work down, wipe the dust down and polish brass. (R. 270.) Room 31 was immediately below the dining-room. (R. 278.) After all the scrubbing and cleaning is done, which with 20 men doing it must make considerable noise, the waiters get ready for breakfast, which is at 8 o'clock, after that they clean up the rooms. (R. 277.)

There were but few passengers on the vessel. The vessel had only about half of her complement of passengers. (R. 279.) Respondent's Exhibit 2 (R. 48) shows 55, and her complement was 109. (R. 276.) And the only passengers in the corridor that the state-room Miss Vargas occupied that appear in the record, was a Chinaman and his family that joined the vessel

at Gautemala, but changed on account of the heat. (R. 94, 95.)

She was interrogated at length as to why she did not cry out, and testified (R. 34):

"A. Because at that particular moment I did not have courage to cry out, and not knowing who would come to my aid, and my voice might not have been heard, on account of the noise that there is in the morning aboard ship, I did not think it possible to be heard."

(R. 87):

"A. Because it didn't occur to me, I did not know that that man entered with bad intentions. What I did was to withdraw my hand forcibly.

A. Because at that moment it did not occur to me to cry out; the only thing that occurred to me was to defend myself.

Well, I moved my body and did everything that was possible to loosen my hand."

(R. 33):

"A. In the first place I did not holler out, because it did not occur to me, because I was afflicted with what was happening."

(R. 34):

"A. Besides I was telling him to leave me alone, to loosen his grip.

A. I don't know. All I do know is that there was an opening that led to the barber-shop, which was some distance away from there, but at that time in the morning I didn't know whether it was open."

(R. 87):

"Because I did not think he came in with bad intentions because at the moment of entering, he asked me, 'Miss, how do you feel, how are you.'"

(R. 88):

"Q. Did you strike him in the face, or scratch him?

A. I did not have the chance, because my hands were held."

As to the unlocking of the door, she testified (R. 79):

"Q. If it was for coffee, why didn't you accept the coffee that Blanco, when he first came into the room, offered to give you?

A. Because he offered to give me coffee, and I knew that a messboy would bring it, and I did not want to accept any favors from him.

Q. Why didn't you want to accept any favors from him, if he was the second steward, and you never had a word with him, except going up the gang plank?

A. Up to that time I did not know he was second steward."

After Blanco had accomplished his purpose, she got up and cried.

(R. 71):

"A. I didn't say anything; I was so completely exhausted."

(R. 35):

"After the act, he saw me cry, and he told me not to worry, that he would marry me.

A. That if I wanted to, we would get married in San Pedro.

A. He says for me to say nothing to anyone; that he would be of service to me, that I would not get any advantage through *it, because they would not pay any attention to me.*

I said nothing; I only cried."

The vessel arrived in San Francisco October 21st, and her sister-in-law met her on the steamer and took

her to her home. (R. 142.) Her brother missed her as he was attending to some trunks or papers or something for her. He went out home when Miss Vargas handed him a letter from their father that she had brought up, in which he stated that he was sending a ring to him by his sister; the brother asked for the ring and Miss Vargas told him a man on the ship had taken it away from her (R. 108, 109); the brother, his wife and Miss Vargas then went down to the ship to get the ring. (R. 110, 143.) There is nothing in the record showing they had any other purpose in going. The ring was on her finger at the time of the assault, but being loose fell off to the floor in the struggle, and Blanco picked it up, "gathered it," as she testified (R. 37), and carried it away with him. Upon their arrival at the vessel Blanco took the ring off his finger and handed it to the brother. Blanco was not produced at the trial, his deposition was taken, when he testified (R. 224, 225) that he never had a ring, never saw a ring, and did not hand a ring over on the above occasion, although three witnesses produced in court testified that he did.

The brother, Ralph Vargas, testified (R. 111):

> "A. Yes, he served liquor there and I said, 'I thank you, I want you to come out for dinner to my house,' because I didn't like to get anything without paying for it."

The brother, and his wife were in complete ignorance of the assault for some time after that, Miss Vargas testifying she did not have the valor to tell him as she was afraid it would shock him too much. (R. 39.) He testified that they had always been very

strict in his family and she was afraid he would throw her out. (R. 116.) She further testified (R. 74) that she did not know she was in that condition until they took her to a doctor (R. 38):

> "A. No, I did not want to tell them, because I did not want to cause a terrible impression, because I had come especially recommended to them in San Francisco."

There were some exchanges of courtesies between the brother and his wife and Blanco, but all the testimony shows Miss Vargas had nothing to do with them. The brother testified (R. 106) about going out to a cafe:

> "A. We took my sister along because we could not leave her in the house by herself."

The testimony shows that she never spoke to Blanco at any of those times, and the visits between Blanco and the Vargas family seem to have been confined to two. (R. 73.)

In March, Miss Vargas had to tell someone of her condition, and being afraid and ashamed to tell her brother, she went to a friend of the family (R. 39):

> "I told Amaral I didn't know what to do, that I am in such a condition, that I would like to leave this place and go somewhere else, because I am afraid to shock my brother too much."

Shortly before that Miss Vargas complained about not feeling well to her sister-in-law who took her to a doctor. (R. 144.) When Miss Vargas came out of the doctor's room crying (R. 144), that was the first time her sister-in-law knew anything about the matter; her husband did not know then. (R. 146.)

Mrs. Vargas was afraid her husband would find out about it, so she went to see Blanco and told him her sister-in-law had told her what had happened to her, and she wanted to know what he was going to do about it because she was afraid her husband would find out about it. He suggested getting a doctor for a criminal operation, saying that he supposed it would need money for that, that he had not any right then but would be able to find some. She suggested marrying respondent, as she was afraid her husband might find out and do something rash. He then told her he was married and had children. (R. 145, 146, 147.)

Amaral, however, went and told her brother (R. 130, 132, 133, 134) and asked him not to put her out of his house. (R. 132.) And the brother told him to take her to the United States authorities and make a complaint, which was done, and Blanco was arrested.

The hearing was had before Commissioner Krull, and it seems they had a great deal of trouble about getting an interpreter, they had three, none appears to have been able to interpret Spanish correctly. (R. 54, 92.) Commissioner Krull (R. 205):

> "A. She could not speak English, and we had quite a little time getting someone to interpret and we finally called upon Mr. Grant, a bailiff of the court, who talked Spanish, and he came in and did the interpreting."

(R. 92):

> "A. That it took considerable effort to make myself understood literally with them when they spoke to me.
> Q. Could they talk good Spanish?
> A. No."

It appears that she learned Blanco was a married man for the first time at the hearing before Commissioner Krull. (R. 73.) Respondent testified as follows before Commissioner Krull (R. 69):

"Q. Did you kiss him?
A. I resisted.
Q. How did you resist?
A. By trying to throw him off.
Q. Did you hit him?
A. I could not, he held both my hands."

* * * * * * *

(R. 70):

"Q. And what did you do when he did that?
A. I was helpless; I couldn't do anything.

* * * * * * *

Q. As a matter of fact, isn't it the truth that you didn't fight with all the strength you had?
A. No, I resisted with all the strength I had.

* * * * * * *

Q. Did you scratch him at all or hit him?
A. No, I couldn't do anything. He had both of my hands and was lying on top of me, and I was helpless."

(R. 71):

"Q. And what did you say?
A. I didn't say anything; I was so completely exhausted."

That is the only description of the attack there was before Commissioner Krull, and seduction cannot be made out of that. Blanco should have been held for the Grand Jury, as that evidence shows nothing but rape.

Defendant was represented there, Commissioner Krull believed her story but thought the case was seduction. Blanco was there and made no denial, the

charge of rape was dismissed and a conversation held in which it was agreed that Miss Vargas should go down to the petitioner's office next day and some financial arrangement should be made on account of her condition and that she should pursue her remedy in the state court. (R. 202, 203, 204, 196, 197-201.) Mr. Grant, then the bailiff of Judge Kerrigan's, now of Judge St. Sure's court, testified in full on that and that someone there gave him Mr. Shenick's (appellant's port steward) card to give to Miss Vargas, so that she would know where to go. (Libelant's Exhibit 1.)

Miss Vargas, accompanied by her brother and Mr. Amaral, went down to both of appellant's offices the next day. Reaching the port steward's office, Blanco was called in; he there said he was sorry for what he had done to Miss Vargas, was willing to pay the expenses of her sickness and take care of the child, and Mr. Shenick gave Mr. Amaral another of his, Mr. Shenick's cards, looked at the calendar and told him to ring up on May 18th, the vessel would be back on that day, for Amaral to call him over the 'phone and bring those people down, and I will see that Joe gives some money to her, and from then on would take care of Miss Vargas and later on would take care of the child. Blanco also said that "the child that was coming was his, that he was sorry for what had happened and would take care of her." To have proceeded any farther would have been compounding a felony.

The vessel went away; this case was commenced about a week after the foregoing. The vessel returned and a day or so afterwards Blanco called up Mrs.

Julian, the mother of Mrs. Vargas, on the phone, went out to her house and talked to her quite a while about the whole matter, told her that he was very sorry, that he wanted to arrange everything amicably with her because there was no need for any lawyers nor any litigation; that he could pay the hospital expenses; that if the child was a girl to give it the mother's name, if a boy his name; that he was sorry for what had occurred, because he was a married man, but if Miss Vargas would wait he would get a divorce and get married to her, but that he did not have any case or reason to get the divorce, etc. (R. 156, et seq.)

Blanco was cross-examined twice and a foundation was laid for impeachment on all of the matters that evidence was introduced on, and he denied everything, contradicted the statement of Commissioner Krull, Mr. Grant, and everyone else that testified for the libelant, seven in all.

All we find to controvert the above mass of testimony is (R. 211):

> "A. I never talked to Ernestina at all; just pass there in saloon and salute me; just say 'Good morning.'
>
> Q. At any time during the month of October, 1927, did you go into the room—stateroom 31—while Ernestina was there?
>
> A. No. I never seen her in the room.
>
> Q. Did you at any time have any relations of any kind with Ernestina?
>
> A. No, sir."

He was cross-examined twice and a foundation was laid for impeachment on all of the matters that evi-

dence was introduced on, and he denied everything, contradicted the statement of Commissioner Krull, Mr. Grant, and everyone else that testified for the libelant, seven in all.

Mr. Shenick went on the stand and contradicted Commissioner Krull, Mr. Krull's records, Mr. Grant, Mr. Amaral and Mr. Ralph Vargas.

A male child was born to Miss Vargas on the 19th day of July, 1928, her labor pains commencing on the 18th; we assume that the labor pains are a part of the birth of the child, and the 18th day of July, 1928, was exactly 280 days after the 12th day of October, 1927, the average period of human gestation. It is in evidence that the features of the child resemble Blanco. (R. 45, 149.) Miss Vargas owes the doctor's bills, works as a seamstress and pays $25.00 per month for the care of the child, and $6.00 for milk. (R. 47.)

When the fact that she was with child became noticeable, her brother and sister-in-law were forced to send her to the country. (R. 42.)

> "A. I left here because even though no one knows me, the friends of my brother who would come there would make me feel ashamed that I was in that condition."

Miss Vargas is of frail stature, Blanco is short and very stout (R. 46) and weighs about 160 pounds. (R. 218.)

Blanco was before Commissioner Krull March 16, 1923, and made no denial. (R. 204.)

> "Q. He never made any denial of this girl's charges?
> A. There was no denial.

Q. Blanco or Blanco Reyes was there?
A. He was present at the hearing.
Q. He never made any denial of this girl's charges?
A. There was no denial."

The next day, March 16, 1928, the following occurred in one of petitioner's offices (R. 117):

"Mr. HUTTON. Q. What did Shenick tell you?
A. Shenick said that Blanco was—Blanco said before that he was awfully sorry for what he did to my sister, that he was able to help my sister, that he was able to help my sister in anything that it comes to, and he gave us a card, the steward, that fellow gave us a card and told us to come there, or call him up, and 'Will you come over to me and we will make some arrangements.'

* * * * * * *

A. Blanco said he was awful sorry for what he did." (See R. 127, 128, 136, 137.)

The complete ignorance of the brother and sister-in-law of the assault is shown by the fact that as soon as he learned of the assault he told Mr. Amaral to take her to the United States authorities. (R. 132.)

"A. Yes, the brother told me to take her to the United States authorities, that she wanted to make a complaint."

Upon going to counsel for petitioner's office to have his deposition taken Blanco's front completely changed, and both lower courts herein, the trial court in effect and the Appellate Court directly (R. 298) find he was guilty of false swearing, and on page 35 of petitioner's brief, we find the following admissions:

"We do not deny that this steward is guilty of false swearing."

* * * * * * *

"He is a Filipino and from the testimony in this case we think he lied to us."

Of course, that is an admission that he told the truth when he spoke to Mrs. Vargas, Mrs. Julian, and to Mr. Vargas and Mr. Amaral down in petitioner's office, at Pier 46 in San Francisco.

On the day of the assault, Miss Vargas spoke to the steward and asked him to put someone in the room with her, testifying that she did not want it to happen again, that she was very much afraid. (R. 36.) The steward testified (R. 269) that he knew enough Spanish to talk to people on the ship and find out their wants, respondent thought he did not understand her, but he must have done, as that night Miss Villavicencio went into the room about 9 or 9:30 p. m. (R. 172.) Miss Villavicencio was not in room 31 at the time of the assault, her own testimony shows that the vessel left La Libertad October 10th (R. 252), Miss Villavicencio joined the vessel in Corrinto (R. 172), where the vessel left October 9th (R. 194), and testified she slept in the second cabin for two nights, so according to her story she could not have gone into room 31 prior to October 11th, but she says she went there at La Libertad, the vessel had left La Libertad and was at San Jose de Guatemala on October 11th, having called at Acajutla on the same day (R. 252); she also testified (R. 270) that it took two and one half days to go from Corrinto to La Libertad, when in fact the steaming time was 13

hours (R. 194); she also testified (R. 168) that she went into room 31 between 5 and 6 in the afternoon and on (R. 172) that she went in at 9 or 9:30, when she went to bed.

She testified (R. 167, 172) that the vessel arrived in San Francisco in November when the fact is she arrived there on October 21st. (R. 252.)

The young lady's testimony is such a mass of contradictions and so contradictory to the facts, that none of it is worth considering. But, she could have been assigned to room 31, and been absent on deck or elsewhere about the vessel and this assault could have happened.

The steward of the vessel as to when Miss Villacicencio was put in room 31 (R. 271):

> "A. It was either the night we left La Libertad, or the next morning I would say; I am not sure as to that."

The best that can be said for that is, that the steward made a guess at the date, and was not sure as to his guess.

All that Mr. Lorenzen knew about Miss Villavicencio is based upon the following (R. 178):

> "A. I believe, after I talked the matter over, that she was a passenger from Corrinto, Nicaragua, to San Francisco, a steerage passenger."

That showed he had no independent knowledge on the matter at all, and makes his whole testimony worthless, and as to Mr. Mallory, he was in San Francisco, and his records would not have been admissible in

evidence if they had been produced; but they were not even produced.

Blanco could not have entered the stateroom for an hour after the door was unlocked.

As to not ringing the bell when he came in, she testified she did not think he came in with any bad intention (R. 80), he almost immediately afterwards took hold of her two hands and threw them up over her shoulders and held them on the pillow, she could not ring the bell then. (R. 33, 87, 88.)

She had nothing but a nightgown on. (R. 33.)

"As I was only in my nightgown, he finally overcome me."

As to her going to breakfast after the attack, the following is what occurred:

(R. 76):

"A. Yes, I left at that hour to go to breakfast, but I did not go to the dining-room, I remained on deck because I could not stand up."

(R. 93):

"A. All that I did was to walk from the door that led to the deck, to the chair that was near by—the deck chair was near by.

A. I remained seated in the deck chair during the day and likewise the remainder of the days."

The testimony on the wearing of the ring is as follows (R. 84):

"Q. Where did the ring fall?
A. To the floor.
Q. He stole this ring?
A. He gathered it up.

Q. And you saw him with the stolen ring for all the rest of the voyage, wearing it?

A. I saw him wearing a ring on the hand, but I didn't know if that was the one.

Q. Didn't you testify before the United States Commissioner that that was the ring he was wearing?

A. No, I said that I did see him wearing a ring, but I didn't know whether that was the ring; but that when I went with my brother to get the ring that that was the ring that he had on."

Of course, it is obvious that if she had given the ring to Blanco to keep for her, she would have asked him for it before she left the ship to go to her brother's house, and would not have gone there without it. She got her money from the purser before she left the vessel. (R. 37.) The various presents mentioned on page 7 of petitioner's brief, are as follows (R. 112, 113):

Ralph Vargas noticed a pair of shoes on Blanco's feet; the latter told him he got them in New York, and Blanco asked his size and brought him a pair, and he gave Blanco a cushion in return. Mrs. Vargas asked him to bring her a parrot, but Blanco sent her a canary bird instead that he wanted to give away to somebody. Then Blanco placed an order for two hats with Mr. Vargas to give to the firm the latter worked for, saying he wanted them for two lady friends of his; Mr. Vargas got the hats, took them down to the boat with a charge of $15.00; Blanco said he did not have the money then but would send it from Los Angeles, but didn't (R. 119, 120, 121); and when Amaral respondent and Ralph Vargas went

down to the petitioner's office pursuant to the arrangements made in Commissioner Krull's office, Amaral demanded payment for the hats, and Blanco paid the money after haggling about the price. (R. 128, 129.)

II.

RESPONDENT'S ASSIGNMENT OF ERRORS.

(R. 291.)

The said lower court erred in not awarding appellee a much larger sum than ten thousand ($10,000.00) dollars for the wrong she sustained, as that amount is not sufficient compensation for such wrong as shown by the evidence herein, and it would require a much larger sum than that to compensate her for such wrong, and the record herein also shows that the appellant condoned the action of its second steward of the vessel "Ecuador," who committed the said wrong upon appellee by treating the same lightly, not insisting upon his prosecution for the crime he had committed, endeavoring to arrange for a compromise of appellee's wrong, and generally affording him aid and comfort after he had violated the chastity of the appellee against her will, resistance and consent on board of appellant's vessel "Ecuador."

Wherefore appellee prays that the award of damages to her herein may be largely increased.

III.

PETITIONER IS RESPONSIBLE IN DAMAGES FOR THE ASSAULT.

Counsel for petitioner admitted that in both lower courts; we however cite the following authorities:

New York Central Rd. Co. v. Mohiny, 252 U. S. 150, 157-8.

"A carrier by rail is liable to a trespasser or to a mere licensee willfully or wantonly injured by its servants in charge of its train (Thompson's Commentaries on the Law of Negligence, 3307, 3308, and 3309, and the same sections in White's Supplement thereto) and a sound public policy forbids that a less onerous rule should be applied to a passenger injured when lawfully upon one of its trains, this much of protection was due plaintiff as a human being who intrusted his safety to defendants keeping. Southern Pacific Co. v. Schuyler, 227, U. S. 601-613. It arose from the fact that he was a human being of whose safety the plaintiff in error had undertaken the charge; with his consent he had placed his life in its keeping. Missouri, Kans. & Texas Ry. Co. v. Sealy, 248 U. S. 359-363.

His claim rests not upon contract of carriage, but upon the general right of a human being not to be injured by the negligence of another * * *."

Steamboat Co. v. Brockett, 121 U. S. 637, 645.

"a common carrier is bound as far as practicable to protect his passengers, while being conveyed, from violence committed by strangers and co-passengers, and undertakes absolutely to protect them against the misconduct of its own servants engaged in executing the contract."

New York Central Ry. Co. v. Lockwood, 17 Wallace 357;

New Orleans & N. E. Railroad Co. v. Jopes, 142 U. S. 18, 20;

Kansas City, Southern Ry. Co. v. Willslie, 224 Fed. 908.

And the many cases cited therein.

We could cite many others.

IV.

ARGUMENT.

If this court will consider claimed errors in the admission of testimony herein:

The testimony on page 12 of petitioner's brief was admissible on two grounds; one was to impeach Blanco. He was cross-examined twice and a foundation laid. (R. 218, 246.)

Another ground, petitioner itself placed Commissioner Krull on the stand. (R. 201-206.) He testified about an arrangement made before him by which respondent was to go down to petitioner's office where some financial arrangment would be made. (R. 203.) Miss Vargas went to two offices, at one, the main office, with Mr. Amaral and her brother and were told that Mr. Schnick at pier 46 had charge of the case and directed them there. What occurred in that office was the consummation of an arrangement made in which respondent took part. Commissioner Krull (R. 203):

> "A. Blanco was there, and there was someone there that represented the steamship company."

What occurred at pier 46 was a part of a transaction that respondent was entitled to.

The evidence of Mrs. Julian, page 13 of brief, was admissible for the purposes of impeachment.

Miss Vargas had already testified that she had made no outcry, so it was entirely immaterial whether if she had made one it could have been heard. (Brief, 13, 14.)

Petitioner's argument about the rooms on the corridor on which stateroom 31 was situated is specious. All the evidence shows there was no one in the rooms. Blanco, as second steward, certainly knew that, hence saw that he would be unmolested in his attack.

Miss Vargas had a right to sit on deck, a great many seasick people prefer the deck where there is plenty of air to a stuffy stateroom.

About having absolute protection with the door locked, we all of us undoubtedly unlock some door or other every day of our lives. The lock was there to be unlocked and people usually use them by unlocking them.

In *People v. Lawler,* 79 Cal. App. 208, 209, a lock matter came up and it seems that counsel for defendant based some claim upon it. The court says:

> "Because at one time in her testimony the prosecutrix testified that she locked the door to her room before she went to bed, and, in another place in her testimony, she testified that about midnight the defendant entered her room, the appellant argues that her story is inherently improbable. *To state the argument is to answer it.* Perhaps the prosecutrix was mistaken when she testified that she locked the door, there are many other possible explanations that would square with her story."

Respondent did not unlock her door about breakfast time. Breakfast time on the vessel is 8 o'clock, testimony of Hr. Henry, the steward. (R. 270.)

The comparison of respondent's testimony on pages 20 and 21 of petitioner's brief, is a misstatement of the record.

It will be remembered that there was trouble about interpreters, and upon interrogation before the trial court (R. 61-67) she denied she had ever testified as the petitioner's brief states she did. Respondent stating (R. 54) speaking of the interpreter:

> "But he did not know how to interpret Spanish correctly?"

(R. 92):

> "A. That it took considerable effort to make myself understood literally with them when they spoke to me."

Counsel for respondent has never been satisfied with the transcript of purported testimony taken before Commissioner Krull. Miss Russell, who took it, testified (R. 51) that she had everything down that occurred before Commissioner Krull, and the testimony of Mr. Krull and Mr. Grant shows clearly she had not. (R. 96-206.)

The following in italics on pages 23 of petitioner's brief is absolutely incorrect.

> "A. Yes, I introduced him at that time, and said that he had taken care of the ring for me."

Miss Vargas (R. 72) testified squarely that she did not say that. As immediately below the foregoing,

upon being asked if she did not so testify before Commissioner Krull, she said:

"A. No. He presented himself to my brother and I told him he is the man who has the ring."

A further misstatement of the record is shown on page 26 of petitioner's brief, as follows:

"Q. And you gave the hats to Blanco?
A. Yes."

Ralph Vargas gave them to him in the sense that he handed them to him, as on pages (R. 119, 120, 121) he testified that when he gave them to Blanco the charge was $15.00 and Blanco said he hadn't the money then but would send it to him.

The card on page 34 of petitioner's brief is not in evidence. All respondent knew about it was it came to the house and she gave it to her brother. Her counsel sought to use it to impeach Blanco, but after visiting the Shipping Commissioner's office and comparing Blanco's signature on the shipping articles of the "Ecuador" he concluded the writing was not Blanco's, so dropped it; but even if Blanco sent it it would not bind respondent. It was simply marked for identification. (R. 49.)

The quotation from *Jensen v. Lawrence,* 94 Wash. 148, on page 51 of petitioner's brief, is only half of the instruction given; the defendant excepted to the instruction. The court held he was not harmed by it and decided as follows in that case.

Jensen v. Lawrence, 94 Wash. 148 (syllabus):

"The evidence in a civil action for an assault and rape is not insufficient to sustain a

verdict from the fact that plaintiff made no outcry, where she testified that she resisted and was overcome by force and that there was intercourse without her consent.

"Rape, Civil Liability, Evidence, Sufficiency. In a civil action for rape the failure of the plaintiff to make an outcry or complaint within a reasonable time, may be explained or excused and it is merely a circumstance which the jury may consider tending to impeach the plaintiff, and not a defense as a matter of law."

The record in this case shows that respondent did not have a thing to do with the intercourse between Blanco and her brother and sister-in-law, and that she never spoke to him, and the following statement on page 36 petitioner's brief, referring to Blanco:

"But the fact that a Filpino waiter from whom little can be expected in the way of integrity"
* * *

promotes the inquiry why did petitioner employ him and try to compromise the matter and keep him in its employment right along. His duties were (R. 256) Curt Zastrow, the master of the "Ecuador":

"Q. What are Blanco's duties?

A. Looking out for the comfort of the passengers and boss the boys; see that they keep their rooms and respective passengers' quarters clean." (R. 261.)

"He has got to look out for the comfort of the passengers. That means to say that he has got to see that everything in the staterooms is all right before the passenger goes in."

Henry, steward of the "Ecuador" (R. 209):

"A. He is to keep the boys working cleaning the rooms and runs the dining room; sees that the boys give the passengers the service."

Blanco was clearly in a position to attack a defenseless girl, as he knew all about the ship and had all the boys working overhead as they were in the habit of doing at that time of the morning. He knew the coast was clear.

A ship manned with unreliable people is unseaworthy and Blanco was the company as far as the passengers were concerned.

He is a married man with four children, and respectable women unquestionably travel on petitioner's vessel "Ecuador"; just how petitioner could continue to bring them in contact with him after the knowledge they obtained on March 16, 1928, has not been explained.

The port steward told Amaral (R. 128):

> "You know, Mr. Amaral, these things are known to me. This is not the first time that things of this kind happen, and a man gets stuck on a girl. I am very sorry."

And he told Blanco in effect that if he furnished money out of his wages, he could continue to work for the company.

If petitioner employs the class of people mentioned on pages 35, 36 of its brief, what can it expect?

V.

IF THE OUTRAGE IN THIS CASE WAS NOT RAPE, WHAT COULD IT HAVE BEEN?

Respondent, a girl of good family, well brought up, well educated, leaves her home and goes on board of

a vessel among total strangers. She does not speak the language of the vessel. Says "I thank you" to a man at the gangway, takes seasick as soon as she gets on board; does not see that man again for about 38 hours. At 9 p. m. of the next day she goes down to her room, is seasick all night, had eaten scarcely anything from the time she came on board and must have been weak and sick. She is assaulted and made pregnant with child. Of course there had to be sexual intercourse. She testified as to how it happened. There is no other explanation of it. Can it even be suspected that she sought that sexual intercourse? The physical facts of the child's birth are present, corroborating her. The admissions of the second steward and the actions of the company corroborate her. There is nothing in the record against her character; the unimpeached record shows that that is the only act of sexual intercourse that ever took place with her. Two courts have passed upon the law and the facts, and the following corroboration appears in the law of nature. It is uncontradicted that the child was conceived October 12, 1927.

> *Estate of McNamara,* 181 Cal. 82, 89-90.
>
> "While the average period of gestation is generally taken as 280 days."

> *Collier's New Encyclopaedia,* Edition of 1928, Vol. 4, page 305:
>
> "GESTATION. In physiology, the act of carrying young in the uteras from the time of conception to that of parturition, the average time of a woman's pregnancy is 9 solar months, or about 280 days, though it may be as few as 7 or as many as 10. * * *"

She commenced to have labor pains, which undoubtedly are a part of the birth of a child on July 18th, 280 days after October 12, 1927, and the only explanation of the conception is that given by her and the admissions of Blanco himself which he subsequently denied making.

In

Wharton & Stille's Medical Jurisprudence, Vol. III, page 27,

we find

> "If her intercourse has been confined to one individual, there is no difficulty in drawing a correct conclusion from the premises. * * *
>
> As a basis for that rule the period of gestation is taken at 280 days."

On page 29 there is a computation of several hundred cases from different doctors, that give an average of 269.7 days. Then a minimum duration given by Auvard of 242 days, and a maximum given by Rossie of 317 days, as follows:

Auvard, minimum	242 days
Rossie, maximum	317 days
Total	559 days
Mean	279.5 days

The child was conceived, and born, its conception was according to the average, and there is nothing in the record anywhere that points to anyone as being its father but Blanco, and his paternity of the child has never been disputed.

The trial court saw her physique, the frailty of her person and concluded from her manner of testifying

that a man short and stout, weighing 160 pounds committed the offense of rape, the learned Circuit Court of Appeals sustained the decree, so the facts are established, and this court has held as follows:

Norton v. Larney, 266 U. S. 511, 518.

"* * * The well-settled rule of this court is that where two courts have reached the same conclusion upon a question of fact it will be accepted here unless clearly erroneous. * * *"

Mills v. U. S., 164 U. S. 644.

"* * * Whether such threats were made or whether in their absence she resisted to the extent of her ability at the time and under the circumstances was a question for the jury. * * *"

If the case is tried before the court, the question is one for the trial court.

The following testimony of the prosecution is uncontradicted. What more could she have done?

(R. 34):

"* * * because every time he would get up close to me in the struggle he would kiss me."

(R. 69):

"Q. How did you resist?
A. By trying to throw him off.
Q. Did you hit him?
A. I could not; he held both my hands."

(R. 70):

"A. I resisted with all the strengtn I had.
Q. Did you scratch him at all or hit him?
A. No, I couldn't do anything; he had both of my hands and was lying on top of me and I was helpless."

(R. 87):

"A. Well I moved my body and did everything that was possible to loosen my hands.

Q. He had one of your hands in each of his hands?
A. Yes."

(R. 88):

"A. He grabbed my hand, and when I was finally able to withdraw my hand, then afterwards he grabbed my hand here (pointing toward the sacrum) and I managed, then, in my struggle, I was able to get to the edge of the bed.
Q. Did you strike him in the face, or scratch him?
A. I did not have the chance, because my hands were held.
A. Yes, he did hold my two hands, but not with his two hands. It was one hand (pointing, with her arm) at first he took her left arm and then took her right arm, and thrust it toward her shoulder and held it against her body. As he was very heavy (taking the interpreter's left hand) he held it at an angle, in about such a position (off the interpreter's breast); with one hand thus he would hold me, and the part of the body he would hold with his arm.
A. He had both hands most all the time, except for one moment he withdrew a hand, but I don't know whether it was for the purpose of lowering his pants or not, but that was the only time when both of his hands did not hold my two hands."

(R. 90):

"A. Almost on the edge of the bed. My legs were up, and then taking her two hands, and holding them over her thus, beyond the edge of the bed. Then, again (illustrating) placing her hands about six inches above her knees, from this part upwards, that part of the body upwards, and this part over the edge of the bed."

(R. 91):

"A. One of his legs budged my legs apart and got in the center."

(R. 71):

"A. I didn't say anything; I was so completely exhausted."

On (R. 45) respondent testified in effect that the bedclothing was almost clean, but that she was almost on the edge of the bed, but that Blanco's clothing was stained. And on page 91 that Blanco threw her nightgown up, and she could not tell whether there was any blood on the sheets as they were all bundled up, but that when she put her drawers on she stained them with blood.

R. v. William Crocker, 17 English Criminal Appeals, (1922) 46.

Lord Chief Justice Darling:

"The jury had the opportunity of seeing and hearing the witness, and there are persons—especially young persons, who somehow are able to convey the fact that the story they tell is true, and here, after the learned judge's warnings, the jury came to the conclusion that the girl's story was true and ought to be acted upon.

The Court considers that it would be a new departure if it allowed this appeal, as it cannot usurp the functions of the jury."

(Syllabus):

"On the trial of a sexual offense against a female her evidence need not necessarily in law be corroborated."

People v. Slaughter, 33 Cal. Appellate 365, 381.

"It is true that her testimony should be clear and convincing, but it is for the jury and the trial judge to determine whether it fulfills that requirement."

People v. Jones, 76 Cal. App. 144, 148.

"It is well settled that one may be convicted of rape upon the uncorroborated testimony of the prosecutrix, if the jury believes her story."

People v. Mazzurco, 49 Id. 275, 276;

Lindville v. Green, 125 Mo. App. 290;

People v. Valencia, 85 Cal. App. 306.

Where the case is tried before a judge, the rule is the same.

The City of New York, 54 Fed. 181.

"The demeanor of the witness is a material and important part of the evidence, which cannot be sent up with the record; and, because this is so, the rule prevails in appeals in admiralty that the opinion of the trial judge will not be disturbed upon questions of fact, depending upon the credibility of witnesses who were examined in his presence, unless there is a decided preponderance of evidence the other way."

But in this case respondent is overwhelmingly corroborated by the testimony of witness and the laws of nature.

VI.

THE LAW OF CRIMINAL AND CIVIL RAPE.

Counsel contends that because there was no outcry or complaint until the prosecutrix was compelled to tell someone by reason of her condition, that she is not entitled to recover, neither of those matters were ever inflicted as a penalty, and are always subject to explanation.

It is proper to say at this time that no two persons male or female will ever act alike in emergencies, and

no rule of conduct can ever be made that will fit all human natures, if there was any such hard and fast rules, it would be the duty of the law to establish training schools to educate women in what to do when criminally attacked so that they could all act alike, and in this case such a school would have been necessary on the "Ecuador."

Criminal rape is an act of sexual intercourse with a female not the wife of the perpetrator, where she resists, but her resistance is overcome by force or violence.

There is nothing anywhere in the definition of rape that requires her to make an outcry. In the case of robbery one person may call out and another may be too terrified to do so, as with all violence to the person, and as the Supreme Court of the State of California, properly said in

People v. Kuches, 120 Cal. 566, 569.

> "(*State v. Cone,* 8 Jones 18): One person would be paralyzed by fear and rendered voiceless and helpless by circumstances which would only inspire another with higher courage and greater strength of will to resist an assault."

The uniform rule at this time is that outcry or no outcry, the question is one for the jury or the trial court, and if either believe her, her uncorroborated evidence is sufficient to sustain a verdict of guilty in a criminal case.

Respondent cites the case of *Olsen v. State,* 11 Nebraska 276, and quotes:

> "Nature had given her hands and feet with which she could kick and strike, teeth to bite, and

a voice to cry out; all these should have been put in requisition in defense of her chastity."

That case was decided in 1881, in the subsequent civil rape case of *Kramer v. Weigand,* 91 Neb. 47, 51, decided in 1912. The same court draws a distinction between civil and criminal rape, and says:

> "When confronted under such circumstances by a sudden, unexpected assault and seized by a fear of being discovered, a virtuous woman, before making an outcry, might trust to her powers of resistance until it was too late, and even conceal the outrage in the hope of escaping exposure."

And also cites *People v. Dohring,* 59 N. Y. 374, where the court says:

> "Of course, the phrase, 'the utmost resistance,' is a relative one; and the resistance may be more violent and prolonged by one woman than another, or in one act of attending physical circumstances than another. In one case a woman may be surprised at the onset and her mouth stopped so that she cannot cry out, or her arms pinioned so that she cannot use them, or her body so pressed upon that she cannot struggle."

The uncontradicted evidence is that respondent's arms were held, her body pressed upon and she was continually being kissed, and that 20 men waiters were scrubbing the deck of the saloon immediately above her head, polishing brass and generally cleaning up the saloon and that there is always a lot of noise at that time in the morning, all those things must be t[illegible]ken into consideration, they operated on her mind, she says they did, and she was necessarily weak

from the lack of food and seasickness, in other words she was not a normal woman.

As to complaints, or present discovery, in the case of

Commonwealth v. Cleary, 172 Mass. 175, 176,

Judge, now Justice Holmes, wrote the following common sense view of that:

> "The rule that in trials for rape the government may or must prove that the woman concerned made complaint soon after the commission of the offense is a perverted survival of the ancient requirement that she should make hue and cry as a preliminary to bringing her appeal. * * * .
>
> If it means what it has been taken to mean, that the government can prove fresh complaint as part of its original case, it cannot be justified by the principles of evidence which now prevail. In general, you cannot corroborate the testimony of a witness by proof that he has said the same thing before when not under oath."

No woman wants to tell to the world that she is no longer a good girl, particularly strangers, and the law does not require that she shall tell strangers or anyone else. As to strangers, in the following case cited by petitioner:

People v. O'Sullivan, 104 N. Y. 481.

We find on pages 489-490:

> "But there may be circumstances which will excuse delay as when the prosecutrix * * * is among strangers."

Miss Vargas was among strangers, and she naturally thought (R. 81):

"A. I did not complain to any of them in the first place, because they did not speak Spanish, and, in the second place, because they might consider me a woman of bad repute or conduct."

(R. 72):

"I decided to suffer my disgrace alone, without telling anybody."

Those are the answers of a modest woman.

State v. Peters, 8 Jones N. Car. 19, 22.

"But it is nowhere held that this female instinct is so strong and unerring as to have been made the foundation of a rule of law, as distinguished from a rule in respect to evidence and the weight to which it is entitled, which is a matter for the jury."

Lindville v. Green, 125 Mo. App. 290:

"but we know of no case where the testimony of the prosecuting witness has been rejected solely on this ground, * * * it must be remembered that plaintiff had no mother nor any other woman sufficiently close in her confidence and friendship in whom to confide." (306.)

"Finding as we do, that her conduct was not necessarily inconsistent with the natural impulses of feminine modesty and virtue."

Kramer v. Weigand, 91 Neb. 50.

"In her testimony she explained that she did not think to make an outcry, and that she was ashamed to tell what had taken place."

Respondent is not the only woman that did not like to tell people of her trouble.

State v. Miller, 191 Mo. 612.

"They seem to indicate that an outcry is a necessary essential part of the proof of this of-

fense, whereas the failure of an outcry is simply a fact tending to discredit the good faith of the charge, a circumstance only of more or less weight, depending upon the surrounding circumstances. A failure to make it raises no presumption of law that the prosecutrix has sworn falsely; it is a circumstance to be weighed by the jury. (State v. Machis, 240 Mo. 650, i. e., 668, 662, and so also the delay in making the complaint."

People v. Horn, 25 Cal. App. 583.

"(Syllabus) In a prosecution for rape it was proper for the court to reject an instruction offered by the defendant, which, if given, would have impressed upon the jury the importance of the absence of proof that the prosecutrix made complaint of the assault immediately after it occurred, as such an instruction would tend to create the impression that a conviction of the crime of rape could not legally be justified where there was not proof of immediate discovery of some third party by the prosecutrix of the fact of the assault upon her person, *which is not required by the law.*"

(588):

"The fact that the prosecutrix in a case of rape might have made complaint of the assault to a third person immediately after it took place may be shown for the purpose of corroboration only."

People v. Martinez, 59 Cal. App. 121.

"As we have stated, the fact of defendant's guilt did not depend upon corroboration of her testimony, and fact that she a female under sixteen years of age, made no outcry but concealed from others the knowledge of the act was not material to the inquiry, provided, the jury upon sufficient evidence was satisfied that he was guilty of the act charged."

Garvik v. The Burlington Cedar Rapids Ry. etc., 131 Iowa, 415, 418.

"While the ordinary female who has been ravished will make the fact known to her family or friends at the very earliest possible moment, complaint is not always made and we have repeatedly held that conviction in criminal cases charging rape is proper though no complaint is made."

People v. Norrington, 55 Cal. App. 103, 108, 109.

"Though the absence of such outcries may have a tendency to refute the hypothesis of guilt, it is by no means conclusive. While, from the nature of the crime, it may be expected in such cases that the utmost reluctance would be manifested, and the utmost resistance made which the circumstances of the case will allow, still, to hold, as a matter of law, that such manifestations and resistance are essential to the existence of the crime, so that it could not be committed if they were wanting, would be going further than any well considered case in criminal law has hitherto gone. (State v. Pilegge, 61 Wash. 264.)"

Baccio v. The People, 41 N. Y. 265.

"that it is so natural as to be almost inevitable, that a female upon whom the crime has been committed will make immediate complaint thereof to her mother, or other confidential friend."

Miss Vargas had no mother, and no friend on board, and Blanco had told her that if she told anyone they would not pay any attention to her, she had a right to think on that that the whole crew were as bad as he was, as to the passengers, she testified (R. 81):

"* * * because they might consider me a woman of ill repute and bad conduct.

(R. 82):

A. I did not have any confidence in her, she was not any friend, other than an acquaintance, a mere acquaintance on board."

Counsel admit the Fillipino waiters were bad.

VII.

THE LAW OF CIVIL RAPE.

Jensen v. Lawrence, 94 Wash., supra;

6 *American Law Reports,* Annotated, 1011 (syllabus).

"Where an assault is accomplished by lascivious conduct by her assailant, and he improperly handles the wronged female, or indulges in undue or indecent familiarity with her person, it constitutes at least an indecent assault, and if the intention is to secure carnal knowledge of the female, it will constitute assault with intent to commit rape, and where actually accomplished by ravishment, it will constitute rape, *providing the woman does not consent to the acts complained of.*"

"This doctrine finds support in the following cases which involve an assault with one of the characters complained of."

The footnote contains a list of authorities from a great many states of the Union.

Totten v. Totten, 172 Mich. 565, 575:

"The court in its charge clearly and correctly defined assault and battery and rape, then stated that in this civil case: 'The mere fact that she did not resist to the utmost would not excuse the

defendant from his unlawful acts, *if you find he had intercourse with her against her consent.*"

The charge was held correct; authorities cited.

In the case of

People v. Bonzani, 24 Cal. App. 549,

the court says on page 558, when discussing the crime of criminal rape:

> "Men often become demons on such occasions or while attempting an outrage by force upon the opposite sex."

Of course, any one is entitled to damages for any kind of an assault the aggravated character thereof simply increasing the amount of the recovery.

33 *Cyc.* 1521:

> "But conduct of plaintiff short of consent is no justification, and if force was used to overcome the resistance of plaintiff and she finally consented to intercourse, although not in consequence of the violence, defendant is still liable in damages for the assault."

Palmer v. Baum, 123 Ill. App. 584.

In that case the parties had been drinking together, and the court stated the law to be as follows, on page 587:

> "The penetration of the person of the woman without her consent, although no considerable force is shown to have been exercised, it amounted in law to an assault; such an assault being clearly unlawful, force may be implied. The mere fact that the woman may have permitted appellant to, and did herself, indulge in such lascivious conduct is to almost amount to an invitation to him to do as he did, did not in law authorize or license him to penetrate her person without her knowledge or consent."

Civil rape is necessarily an aggravated assault and battery, and the courts uniformly hold that lack of consent to penetration is all that is necessary to sustain a conviction.

VIII.

PETITIONER'S AUTHORITIES.

They are from nine states in the Union, all of considerable age, and the court rendering the decisions has either modified the language or said something else in about all of them.

In this case there is no conflict of evidence now, and respondent is overwhelmingly corroborated. There are some special facts in each case cited by petitioner, as follows:

People v. Benson, 6 Cal. 221, 223.

The Supreme Court of California distinguishes that case in *People v. Moore,* 155 Cal. 237, saying, referring to *People v. Benson,* on page 240:

> "In several subsequent cases the language of that part of the opinion in the Benson case in which the weakness and inconsistency of the evidence is commented upon has been adopted as a ground of decision. But they were cases in which the prosecuting witness was uncorroborated as to the assault, and where circumstances inconsistent with her testimony were clearly proved. * * *"

People v. Benson is also commented upon by the District Court of Appeal in

People v. Norrington, 55 Cal. App. 103, 109, where the court says that it and other cases were re-

viewed by the Supreme Court in *People v. Moore,* and

> "They have no application where, as here, all the outward facts are clearly established."

The conviction was sustained in *People v. Dohring,* 59 N. Y. S. 374, and we have already quoted from that decision.

We have also heretofore quoted from

People v. O'Sullivan, 104 N. Y. 481.

In that case the prosecutrix claimed she had been assaulted by a Catholic priest, in whose house she was housekeeper, she remained in the house, went to confessional, and made no complaint for eleven months.

In *Lind v. Closs,* 88 Cal. 6, the resistance, if any, was equivocal, and the defendant admitted a great deal of what the prosecutrix testified to, claiming consent; she, however, told so many conflicting and improbable stories that the verdict was set aside.

See

Kramer v. Weigand, supra.

In *Oleson v. State,* 11 Neb. 276, the case was reversed for errors in admission of testimony; whatever else appears was therefore dictum.

Connors v. State, 47 Wis. 523, was reversed for errors in instructions, and there was strong evidence in favor of defendant.

Whittaker v. State, 50 Wis. 518, was reversed for improper instructions.

One of those cases was decided in 1880, and one prior thereto. In the subsequent case of

McLain v. State, 159 Wis. 204,

decided in 1914, which is also a later case than *Brown v. State,* 125 Wis., largely relied upon in petitioner's brief, the same court says:

> "It must be remembered that the term 'utmost resistance' is a relative rather than a positive term. What would be 'utmost resistance' on the part of a weak, nervous person with a temperamental and easily frightened disposition, might be the veriest sham on the part of a robust person in good health whose nerves and courage are normal."

Counsel for petitioner seems to misunderstand.

State v. Cowing, 99 Minn. 123 (Syllabus):

> "In a prosecution for rape, resistance of the female is of necessity an issue only as it is invoked in the proof of her want of consent, which is always required. To show unwillingness her resistance must be proportionate to the occasion under the circumstances and at the time of the act complained of; in many cases there must be resistance to her utmost, or at least to the extent of her ability. In peculiar cases a less degree may be sufficient. In exceptional cases, rape may be made out without any proof of resistance."

Same court, *Wiltska v. Moudray,* 83 Minn. 73, 81:

> "The defendants further request, after pointing out in a proper manner the evidentiary force of silence by plaintiff, and her failure to denounce the perpetrator of the assault afterwards, destroys the value of such suggestions by the qualifying phrase that such failure to make an outcry, or to denounce her assailant, creates a presumption against her. The instruction in that regard went too far."

In *State v. Barnes,* 140 Minn. 519, the court held that the whole question was one for the trial court or jury.

Champagne v. Hamey, 189 Mo. 709, presents a singular state of facts. Hamey was convicted of rape, in a criminal case, the Appellate Court sustained the conviction, but reversed a judgment for damages presumably upon the same evidence. But in that case the families lived within 90 feet of one another, and the girl made no complaint of force for about a year and until after a child was born.

State v. Kinney, 44 Conn. 153.

Is contrary to all the decisions, as it holds that the details of an extrajudicial statement can be given in evidence.

The case was decided in 1876, and the court says (p. 156):

> "We are aware that the decision in this case goes farther than the courts have gone in England and in most of the states in this country."

In 1908 the same court says in *State v. Sebastian,* 81 Conn. 1, 6:

> "* * * and proof has been admitted of complaints made many months after the time when, as the complainant declared, the rape took place."

On the quotation from Blackstone, he, Blackstone (Cooley's Blackstone, 1374), takes up the original rule established many years before. Parliament fixed forty days as the time in which a complaint could be made, then abolished it and fixed no time at all, as the writer adds "for the reason that time does not run against the king." At that time England probably had about two or three million people, was largely rural, everyone knew everyone else in the vicinity, and the previous reputation of a girl was well known, so that that

alone was at hand to know whether the complaint was well founded or not, a complainant was not among strangers, not in a new environment, and the conditions were entirely different to that of a young person going on board of a modern steamship.

Blackstone divides women up into two classes, writing of those of good and those of bad fame, and what appears on page 43 of petitioner's brief relates to women of bad fame, and even then he writes that it is but a question of credibility, as follows:

> "These and the like circumstances carry a strong *but not conclusive presumption* that her testimony is false or feigned."

That language shows that the credibility of the prosecutrix is a question for the trial tribunal.

In *Mills v. United States,* this court refused to pass upon the facts, except comment on the improbability of the story of the complaining witness. The court cites Sec. 1122 of *Bishop on Criminal Law.* In the last, 9th ed., published in 1923, we find the following in that section, speaking of the authorities:

> "The stronger ones just quoted might not be very objectionable in a barbarous age, but in our age, to compel a frail woman, or girl of fourteen, to abandon her reason, and measure all her strength with a robust man, knowing that the effect will be to make her present deplorable condition the more wretched, yet, not to preserve her virtue, on pain of being otherwise deemed a prostitute instead of the victim of an outrage, is asking too much of virtue and giving too much to vice. *The text of the law,* we have seen, and, it is believed, the better judicial doctrine requires only that the case shall be one in which the woman did not consent. Her resistance, however, must not be a mere pretense, but in good faith."

IX.

THE COURT ERRED IN NOT AWARDING A LARGER SUM AS DAMAGES.

The award was $10,000.00. That amount put out at bank interest would produce but $425.00 per annum. Miss Vargas has to pay her lawyer, so she will not net that amount. It is costing her $25.00 per month for the care of her child brought into the world against her will, and $6.00 for milk, a total of $31.00 per month, or $372.00 per year, without clothes or other necessaries.

In the case of

Campbell v. Pullman Palace Car Co., 42 Fed. 484,

heretofore cited herein, the court charged the jury, on the question of damages, that she was entitled to recover for detriment to her health and strength by the wrong done her, including pain and suffering, mental and physical. An award of $11,000.00 was made and the case was afterwards affirmed by this court. In that case the facts showed no sexual intercourse, no force, and money was worth much more than it is now.

McGhee v. McCarley, 103 Fed. 55.

In the following case money was of much greater purchasing power at that time and the jury gave an award of $25,000.00, and the facts in that case were not nearly as bad as they are in this.

Marshall v. Taylor, 98 Cal. 55.

The Supreme Court says on that subject on pages 62, 63:

> "We are not prepared to say that the damages are excessive. Courts are not disposed to make smooth the ways of the seducer. At common law in these cases, verdicts of juries were seldom held to be excessive, and this, too, where the parent recovered damages upon the fiction of loss of service. With much greater reason should we not disturb the amount of a verdict where the party directly injured is the party plaintiff. Through the seducer's arts a young girl has been outlawed from society; she has been cast upon the world, robbed of her innocence; and injury has been done which nothing can repair; a loss has been suffered which nothing can alleviate."

In that case a child was born, but the evidence was sharply conflicting.

Corporations are liable in exemplary damages in cases like this, and exemplary damages are the rule in such cases.

See 33 *Cyc.* 1521.

The ability of defendant to pay is shown by the fact that it is capitalized for $1,500,000.00.

We do not think appellant is entitled to any sympathy in this case. Its Port Steward was present at the hearing before Commissioner Krull, and it was there determined that Miss Vargas was entitled to redress. The whole actions of appellant since have been a ratification of what he did, but the young lady, who was entitled to safe carriage, as her relatives paid for it, has never received the coldest consideration from appellant.

Respectable women travel on the ocean. The following shows that appellant does not seem to think that is of much consequence (R. 126), which is a part

of the conversation between Mr. Schenick, appellant's Port Steward, Amaral, and Mr. and Miss Vargas:

> "He said, addressing Joe, 'You know that you can't work for this company unless you take good care of this girl and the child that is coming that is yours.'"

Blanco was still kept in appellant's employ.

We respectfully submit, that respondent's case is overwhelmingly established, that the claims about outcries and complaints are but matters that no longer are considered of any importance, except when the testimony of the prosecutrix stands alone, and is weak, and then only for corroboration, and that the corroboration of respondent in this case is so overwhelming that they are unimportant.

The defense in the case seems to be as follows:

1. That if the crime of rape is committed and the woman attacked makes no outcry or subsequent complaint the crime of rape is not committed even though she is overwhelmingly corroborated.

2. That Commissioner Krull did not think the crime was rape. What difference does that make? Two courts charged with passing all of the facts have held that it was, and the testimony before him shows he made a mistake.

3. The innuendo that Miss Vargas unlocked the door of her stateroom to allow Blanco to enter. The uncontradicted proof herein is that they never talked together.

4. That Miss Villavicencio had been assigned to stateroom 31 while the vessel was in La Libertad.

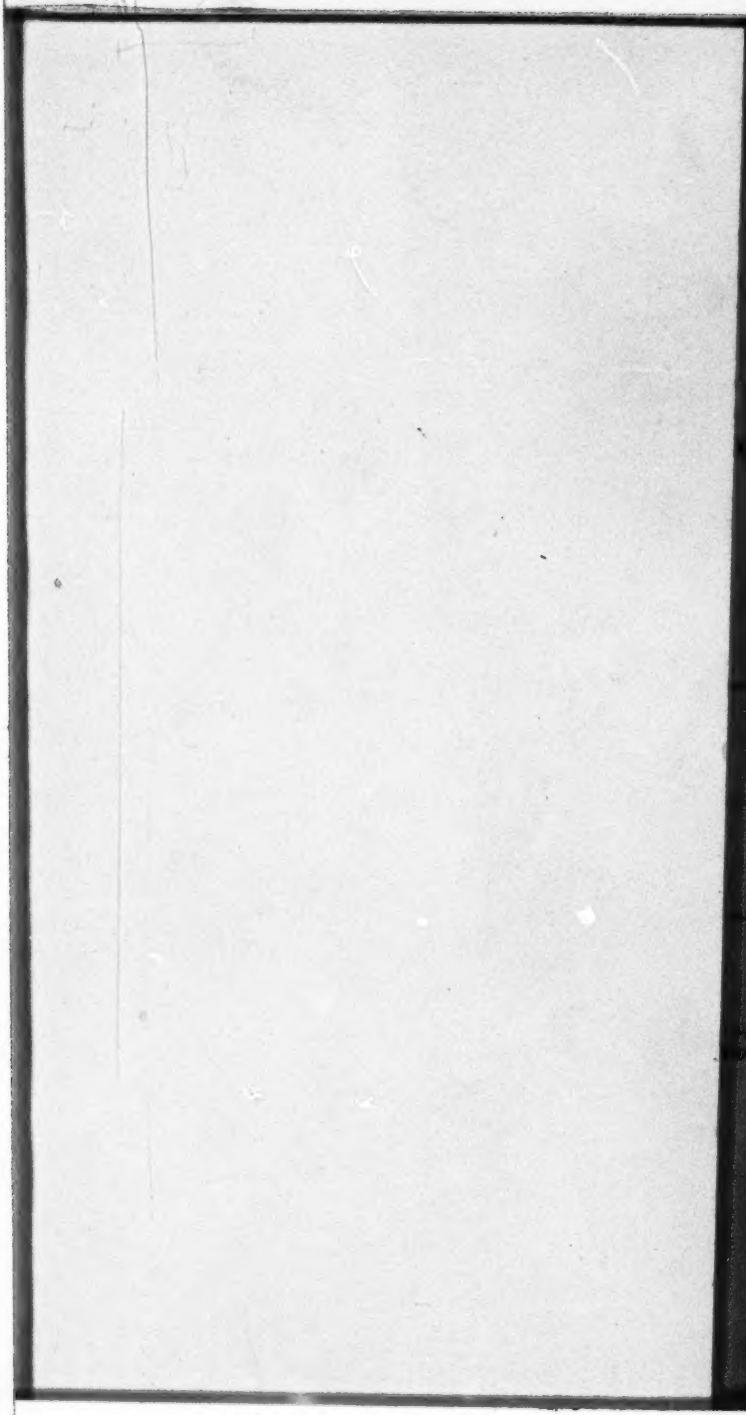
The testimony shows that she was not assigned until the evening after the attack. But if she had been assigned, this attack could have been made while she was absent from the room.

As to the ring, Miss Vargas left money with the purser, and had it returned before she left the vessel. If she had wished safekeeping for the ring she would have given that to the purser also, and if she had given it to Blanco she would have got it back again when she left the vessel, as she did her money, and not made another trip down there with her brother and sister-in-law to get it.

We respectfully submit that her case shows an atrocious assault, is overwhelmingly established and that she is entitled to larger damages.

Dated, San Francisco,
April 7, 1930.

Respectfully submitted,
H. W. HUTTON,
Attorney for Respondent.



SUPREME COURT OF THE UNITED STATES.

No. 425.—October Term, 1929.

Panama Mail Steamship Company, Petitioner, *vs.* Ernestina Isabelle Vargas.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

[June 2, 1930.]

Mr. Justice Van Devanter delivered the opinion of the Court.

This is a suit in admiralty brought in the District Court of the United States for the Northern District of California against a company owning and operating an American steamship as a common carrier, between ports in Central America and the port of San Francisco, to recover damages for an alleged assault constituting rape committed by an employe of the ship on a young woman while being carried thereon as a passenger. The plaintiff was given a decree, which the Circuit Court of Appeals affirmed, 33 F. (2d) 894; and the case is here on certiorari.

The District Court delivered no opinion and made no findings of fact other than such as may be implied from the decree. The Circuit Court of Appeals described the evidence as conflicting, the plaintiff's case as not free from suspicion, and the defense as weak; and it then affirmed the decree on the stated ground that appellate courts refuse to review decisions of trial courts based on conflicting testimony taken before them, unless the record discloses some plain error of fact or some misapplication of the law.

Thus we have a case in which the evidence is conflicting—pronouncedly so according to the argument in this Court — and in which there has been no distinct finding of the facts by the court primarily charged with their determination. No doubt a finding of some kind is to be implied from the decree — a finding that would suffice as against a collateral attack. But the present attack is direct, not collateral. It is made in an appellate proceeding where the review, unlike that on a writ of error at law, extends to the findings of fact as well as to the rulings on questions of law.

The decree does not show on what premise of fact or law it was given, but only that it was given on some premise which in the court's opinion entitled the plaintiff to the decree. The court may have regarded the evidence as showing seduction rather than rape and may have given the decree on the theory that the defendant was equally liable in either case. In the absence of distinct findings an appellate court cannot know how the questions of fact were resolved. The situation is much like that described in the following extract from *Lawson* v. *United States Mining Co.*, 207 U. S. 1, 11:

"It is insisted that the findings of the Circuit Court should have bound and concluded the Court of Appeals upon questions of fact. The difficulty with this contention is that there is nothing to show what the Circuit Court found to be the facts. Whatever might have been suggested by the course of the argument at the hearing, the comments of the court upon such argument, or in announcing its decision, there is nothing in the record to indicate whether its decision was based upon a question of fact or a matter of law. The record only contains its decree, dismissing the bill. All else is a matter of surmise, except as may be inferred from the allegations of the pleadings and the scope of the testimony. While it is apparent that the Circuit Court must have based its decision upon one of two or three grounds, yet upon which it is not certain."

And see *City of New York*, 54 Fed. 181.

Formerly it was the general practice in suits in admiralty to make distinct findings on the issues of fact; and while that practice placed an added duty on trial judges it was attended with undoubted advantages, in that it made for greater precision in the disposal of such suits in the trial courts and facilitated the presentation and consideration of appeals from decrees therein.

In the present case we think the situation requires that the decrees in both courts below be vacated and the case remanded to the District Court with a direction to make specific findings of fact and to take such further proceedings as may be in conformity with law.

If the judge who presided at the trial and rendered the decree is prepared to make such findings without a further trial, that course may be taken; otherwise the case should be retried.

Decrees vacated and cause remanded for further proceeding in conformity with this opinion.